DOCUMENT RESUME

ED 240 204 UD 023 348

AUTHOR	Viteritti, Joseph P.
TITLE	External Constraints on Organizational Change: A Study of the New York City School System.
PUB DATE	83
GRANT	NIE-G-81-0032
NOTE	493p.
PUB TYPE	Reports - Research/Technical (143)
EDRS PRICE	MF02/PC20 Plus Postage.
DESCRIPTORS	*Accountability; *Administrative Problems; Case Studies; Centralization; Compliance (Legal); Conflict; Decentralization; Educational Improvement; Educational Needs; *Educational Policy; Elementary Secondary Education; Minimum Competencies; Organizational Change; *Policy Formation; *Political Influences; School Community Relationship; School Desegregation; Teacher Discipline
IDENTIFIERS	Education for All Handicapped Children Act; *Interest Groups; *New York City Board of Education

ABSTRACT

This is the report of a study that examined the relationship between the New York City school system and the external (social and political) environment of which the school system is a part. The study had two purposes: first, to determine the impact that external constituents of the school system have on internal policymaking and implementation; and second, to determine the extent to which these external constituents represent the wants and needs of the clientele which the school system is supposed to serve. It was hypothesized (1) that constituents to which the central administration must respond are so diverse that they function as an obstacle to internal governance and control, (2) that conflicting demands imposed by these constituents inhibit the establishment of unified policy, and (3) that the external constituents are neither representative of nor responsive to the clientele served by the central administration. In order to test the hypotheses, five case studies (presented in this report) concerning major policy issues were conducted. Issues explored in these studies were (respectively) (1) budget development during three fiscal years (FY80, FY81, FY82); (2) the upgrading of minimum competency standards for elementary and secondary grades; (3) implementation of measures to comply with a Federal Court mandate enforcing the Education for All Handicapped Children Act; (4) enforcement of a Federal order by the U.S. Office for Civil Rights to desegregate an intermediate school (I.S. 241) in Queens; and (5) an attempt by central school officials to amend state law establishing formal procedures for disciplining and removing unsatisfactory teaching personnel. The report concludes with discussions of the politics of education in New York City, and dilemmas faced by the central administration in responding to diverse groups. Recommendations are also presented for reducing conflicts between governing boards, decision makers, and interest groups. (GC)

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EXTERNAL CONSTRAINTS ON ORGANIZATIONAL CHANGE:

A STUDY OF THE NEW YORK CITY SCHOOL SYSTEM

Joseph P. Viteritti

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Report prepared for the National Institute of Education,
Program on Educational Policy and Organization,
Grant No. NIE-G-81-0032.

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UD023 348

The contents of this book were developed under a grant from the National Institute of Education, US Department of Education. However, those contents do not necessarily represent the policy of that agency, and you should not assume endorsement by the Federal Government.

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CHAPTER ONE

INTRODUCTION

In his well-known study of the New York City school system, David Rogers[1] described the central headquarters complex at 110 Livingston Street as a "model of bureaucratic pathology" which is characterized by poor communication and control and is remote from the clientele which it serves. In a similar study, Marilyn Gittell[2] described the same institution as being rigid and hostile to change. These studies were part of a growing literature in the sixties which criticized large urban bureaucracies in general and public school systems in particular for their unmanageability, organizational inertia, and inability to respond to the demands of their clientele. Urban school systems were singled out for their insensitivity to the needs of a school population which was becoming increasingly more Black and Hispanic.

It was such criticisms which led to demands for the decentralization of these school systems and for institutional reforms that would allow for direct community and client involvement in educational decision making.[3] Many school systems like New York responded to these demands for change with institutional reforms that were designed to dismantle the large cumbersome bureaucracies that controlled urban education and to introduce to the decision process participants who were isolated not only from educational policy making, but also from the overall political process. These institutional reforms in education were part of a more general urban reform movement which was built around the concepts of neighborhood government and community control.[4]

Now, after more than a decade of experimentation with decentralization, many of the problems previously identified with centralization still exist. Large urban school systems remain difficult to manage, they are resistent to change, and they are not always responsive to the needs of their client groups. This disappointing outcome of the reforms instituted raises a significant question as to whether the problems identified are the result of factors that can be associated completely with structural arrangements and the internal dynamics of the bureaucracy or whether there exist significant contributing factors in the external environment of these institutions. A major weakness of the existing literature on public bureaucracy is its preoccupation with the internal dynamics of organizations. The problems concerning manageability, control, inertia, and responsiveness are usually associated with behavioral or structural patterns within the organization. This is not to say that research on the relationship between organizations and their environment does not exist, nor is it to say that this work has been insignificant. However, a good part of it has focused on private sector organizations. The work related to the public sector has been one-dimensional and has left us with a limited theoretical perspective on how external variables affect the operation, effectiveness, and responsiveness of our large urban systems.

PURPOSE AND SCOPE OF THE STUDY

This study will examine the relationship between the central Administration of the New York City school system and the external environment of which it is a part. Its purpose is twofold:

1. To determine the impact which the external constituents of the school system have on internal policy making and implementation
2. To determine the extent to which these external constituents represent the wants and needs of the clientele which the school system is supposed to serve

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These objectives are carried out through the development of five case studies. The case studies are all concerned with major issues of educational policy that evolved during the first three years of the Administration of Chancellor Frank J. Macchiarola which began in July of 1978. These issues cover the following topics:

- The budget development process which took place during three fiscal years (FY 80, FY 81, FY 82)
- The upgrading of minimum competency standards for the elementary and secondary grades
- The implementation of measures to comply with a federal Court mandate enforcing the Education for All Handicapped Children Act (P.L. 94-142)
- The enforcement of a federal order by the United States Office for Civil Rights to desegregate an intermediate school (I.S. 241) in Queens
- An attempt of central school officials to amend a state law which establishes the formal procedures for disciplining and removing unsatisfactory teaching personnel

The topics and issues that have been chosen for development in the case studies were selected according to three criteria:

- Relevance to the hypotheses and central concepts posed
- Significance as educational and political issues in New York City during the time interval covered
- General applicability to other urban school systems

This study proposes that the existence of multiple constituents to which the central school system must respond leads to the development of three conditions which limit the levels of control, reform, and responsiveness that are attainable.

Hypothesis I -
The constituents to which the central administration must respond are so multiple and diverse that they function as a significant obstacle to the internal governance and control of the school system.

Hypothesis II -
The conflicting demands which the multiple constituents impose on the system inhibit the establishment of a unified policy direction.

Hypothesis III -
On the whole, the external constituents to which the central administration must respond are neither representative of nor responsive to the clientele which it serves.

The analytical distinction made here between organizational constituents and organizational clients is a serious and conscious one. The former refers to those individuals, institutions or groups to which an organization is accountable; the latter refers to the individuals who actually receive the service provided.[5] When the individuals who belong to these two categories are different, a situation is created whereby the organization is less likely to be responsive.

The term "responsiveness" is used to refer to the capability of an organization to address the wants and needs of its service clientele. In the New York City school system, as in the school systems of most central American cities, this clientele has become increasingly drawn from the families of racial minorities. Because of such factors as white flight to the suburbs, the rise in private school enrollment by the middle class, and the in-migration of blacks and Hispanics, the percentage of public school children in New York composed of racial minorities rose from 40% in 1960, to 62% in 1970, to over 70% in 1980. Given the sociology of the City, these demographic shifts changed not only the racial composition of the student population, but also its socioeconomic characteristics.

The capability of the school system to respond to the wants and needs of this emergent population is the central concern of the present study. The concepts of "change" and "control" derive their significance from the interrelation they share with the more central concept of "responsiveness".

That interrelationship exists because change and control are seen here as determinents of the capacity for responsiveness. Thus, organizational change refers to a process which allows a historically stagnant, insensitive and closed bureaucracy to be responsive. Organizational control will be understood as a prerequisite attribute of an organizational hierarchy whose leadership seeks to foster change.

The first hypothesis, which suggests how the multiple constituents of the school system inhibit the internal capacity for management and control, is not presented as an entirely novel one. In commenting on the authority and power of the Superintendent, the chief executive officer of the central bureaucracy (now referred to as the Chancellor under decentralization), David Rogers wrote that this authority and power are "far too limited for him to play a decisive role." [6] He found that the Superintendent "must spend too much time meeting with various interest groups, tending to particular crisis situations, and playing a purely public relations role..." [7] Thus, he concluded, "If the Superintendent uses what little power he has, he gets stopped before he can carry out his plans." [8] The difference between the situation that Rogers described under centralization twelve years ago and that which is being analysed in the present study is that now, under decentralization, the Chancellor has less formal authority within the system. What decentralization has done in reality is to produce 32 new local constituencies (in the form of community school boards) with which the Chancellor must share power.

The second hypothesis relates to the negative impact which the conflicting demands of multiple constituents have on the organizational capacity to establish a unified policy direction. This is not proposed as an entirely novel idea either. In their classic study of power and politics in New York

City, Sayre and Kaufman found that because the configuration of claimants on each side of every controversy in school politics is often composed of quite disparate groups, all decisions in the school system are the product of compromises.[9] However, despite the problems this situation created with regard to internal management control, Sayre and Kaufman did see it in a positive light. They saw the involvement of multiple interests and groups as an opportunity for school executives to "play off one against the other" and follow their own preferences at least "part of the time."[10] Moreover, and even more significantly, they perceived the "pluralistic" nature of decision making as a testimony to the claim that the school system in New York, and the local government in general, was representative, open, and responsive to all groups within the City.

The major point of departure for the present study concerns the third hypothesis, which suggests that the external constituents to which the school system must respond are not representative of the clientele it serves. Contrary to the conclusions of Sayre and Kaufman, the present study proposes that the pluralistic nature of decision making in the school system is not an institutional arrangement which contributes to the ideals of representativeness, responsiveness, or equity. While the pluralistic nature of the system may give school executives an opportunity to play one group off against another in order to get their way, there is no institutional assurance built into the system which guarantees that school executives are responsive to the clientele. While individual executives may have a favorable disposition towards their clientele, there still remain many institutional obstacles in the system that can prevent school officials from acting on it effectively. While the constituents to which the system had to respond in 1960 may have been representative of the clientele which it served at the time, the composition of that constituency has not changed sufficiently with the turnover of the clientele during the last two decades.

The present study will differ somewhat in approach from that utilized by Sayre and Kaufman and other members of the pluralist school of thought[11] in that it will focus not only on the role of interest groups in influencing policy decisions, but also on the role of those participants who exercise legal authority over decisions. These participants include various components of the federal, state, and local governments. With the implementation of decentralization, they also include thirty-two local school boards that share authority with central school officials. This study will attempt to demonstrate that contrary to what advocates of decentralization assumed, the community school board constituency is not always representative of the service clientele. To the contrary, it often serves as an obstacle to those very changes that are designed to make the system more responsive.

ORGANIZATIONS AND ENVIRONMENTS

Students of complex organizations have long recognized the significance of studying the relationship between bureaucratic institutions and the environments to which they belong. One of the first among these was Herbert Simon, who in 1945 observed that in order for administrative institutions to remain viable, they must not only maintain the internal support of their own employees, but they must also maintain the external support of their customers or clients.[12] Thus, for Simon, the role of an organizational executive was to maintain a proper equilibrium of incentives that would not only induce employees to adopt the objectives of the organization, but also encourage outsiders to support its existence.

Simon's focus on the role of outside groups and their relationship to organizational life represented a significant departure from more traditional approaches to the study of administrative institutions. Traditional theorists tended to view organizations as closed systems. Thus, classical writers such as Max Weber and Frederick Taylor [13] tended to focus the attention of their writing on the internal dynamics of bureaucracy.

Simon's work gave birth to what is commonly referred to in the literature on organizations as the "open systems" approach. [14] Open systems theory tends to view organizations as being responsive to changing environmental inputs and therefore perceives organizational structure and behavior as constantly being in a state of flux. As open systems theory becames more prominant in the professional literature, its proponents began to attach new labels to it in order to distinguish it from the more traditional approach used by their predecessors. Gouldner [15] saw the dichotomy as one between a "natural" approach to organizations and a "rationalist" approach. Burns and Stalker [16] distinguished between an "organic" and a "mechanistic" approach. Other students of the subject like James D. Thompson [17] chose more of a middle ground. Thus, Thompson suggested that while organizations seek to achieve rationality through closedness, they are constantly subject to the uncertain influences of a changing external environment.

What has emerged over the last two decades is a substantial literature on the nature and classification of external organizational environments. Emery and Trist [18] discussed the causal texture of the environment which they treated as a quasi-independent domain. They classified this external environment according to four ideal types: placid randomized; placid clustered; disturbed reactive; and turbulent. Their major concern was a conceptual typology that would enable theorists to determine whether particular environments had a stabilizing or disruptive influence on the organizations studied.

One of the early significant empirical contributions to the research literature on organizations and their environment was that completed by Lawrence and Lorsch. Lawrence and Lorsch completed two complementary studies on private sector organizations. The first involved two firms in the container industry and two in the consumer foods industry.[19] The second was concerned with six subunits of a chemical company.[20] What their research seemed to suggest was that organizations which are consistent with their environment are more likely to achieve high performance levels than those which are not.

Shortly thereafter, Terreberry,[21] in a comprehensive review of the existing research literature, proposed two hypotheses on the nature of organizational life. The first stated that organizational change is becoming increasingly externally induced. The second proposed that organizational adaptability is a function of the ability to learn and to perform according to changes in the environment. Her work served as a precursor to a more recent evolutionary approach to organizational survival which suggests that social development occurs through the natural selection of those organizations that are most capable of adapting to changes in their environment.[22]

Throughout the early and late seventies, research and writing concerning the effects of complex external environments on internal organizational processes continued.[23] However, while this literature contributed to the richness of organization theory and amounted to a significant contribution to the social sciences, the fact remains that most of the empirical research on the subject is concerned with private sector organizations. This work has been informative and useful to students of the public sector, but its applicability is limited. While the focus upon organizational survival and its relationship to environmental influences is certainly relevant to both private and public sector institutions, survival is only one goal of public sector institutions, and one might argue that it is not the most important. The primary purpose of a public bureaucracy is to serve the public. Survival, therefore, should be incidental in the total scheme of things. Normative issues concerned with questions of responsiveness and equity are more relevant to the study of public administration. As the research in the present study suggests, the student of public administration might more appropriately investigate the environmental conditions under which government bureaucracies are representative of and responsive to the clientele which they are supposed to serve.

There is no intention to suggest here that research on the relationship between public bureaucracies and their environments is either nonexistent or insignificant, for that is not the case. In the field of urban education, for example, Cistone [24] and Crain [25] analysed how political and environmental contexts affect the management of school systems and how the resultant styles of leadership affect policy outcomes. In a study of health and welfare services, Levine and White [26] documented the interdependence of public agencies and their need to set up interorganizational exchange networks in order to achieve their objectives.

However, notwithstanding the aforementioned contributions to the professional literature, a good deal of the research on public bureaucracies and their environments has been one-dimensional. Taking its direction from the discoveries that have emerged from private sector research, the public administration literature has displayed a preoccupation with the question of organizational survival. Political scientists, for example, have given much attention to the role that powerful client or constituent groups play in helping government agencies to secure, maintain, and increase their operating budgets.[27] They have observed that government agencies, in order to cultivate the support of such outside groups, have often fallen under the control of the very interest groups they are supposed to serve or regulate.[28] In a more recent study, Herbert Kaufman has demonstrated that, given this preoccupation with survival, relatively few government agencies allow themselves to lose their bases of support and go out of existence.[29]

In a recent study of finance departments across the United States, Marshall Meyer presented and verified a four-point hypothesis on the relationship between public agencies and their environment. He argues that:

1. The structure and behavior of public bureaus are largely shaped by environmental forces, especially those that are political and social.
2. This pattern is not necessarily dysfunctional because it may mean that government agencies are properly more open to external pressures than popular beliefs about them would suggest.
3. Environmental effects may be mediated by a variety of mechanisms within organizations, such as the stability and nature of organizational leadership.
4. Many ongoing organizations do not change fast enough, and hence are rendered inconsistent with their environment and are replaced.[30]

The first hypothesis is consistent with the findings that have been cited on the private sector research and serve to demonstrate once more the importance of external environmental influences on internal management. The last hypothesis is indicative once more of the consistent preoccupation with survival that is found in public administration research. The third hypothesis is related to the strategies and techniques which organizations use to deal with complex environments. This is relevant to the literature that has been cited on urban school systems,[31] and will be a concern of the present study.

The second hypothesis is indicative of a more general normative concern within the public administration literature. It is connected with a basic and aged question which can be articulated as follows: "Given the fact that those officials who run the public bureaucracy are not elected by the people, is it possible for them to be responsive to their external environment, or are bureaucracies tightly closed institutional structures that are remote from such influences?" Meyer, as many students of the subject before him, has found that public bureaucracies indeed are open systems. However, Meyer, as those before him, does not take the normative question to its logical conclusion: "To whom" we might ask, "are these institutions open?" As most institutions in government, our public bureaucracies are responsive to particular constituencies. But the real issue in American democratic theory is not whether our institutions are responsive to public influence, but whether those groups who exert influence are representative of the entire public, or at least that public for whom specific services are to be provided. It is for this reason that the analytical distinction between an organizational constituency and an organizational client is important. While political scientists have recognized the difference between a constituency to which an agency is responsive and a clientele to which an agency provides a service, they tend to use the terms interchangeably. This is primarily due to the fact that in most cases, analysts assume that members of the constituency and members of the clientele are one and the same. This study will attempt to demonstrate that such is not always the case, and in so doing, will show why, from the point of view of social equity, the difference is important.

BUREAUCRACY AND EQUITY

The question of the relationship between bureaucratic organization in government and the goal of social equity is an old one. Max Weber, one of the first and foremost students of the subject, found the relationship to be quite definite. While Weber recognized the threat that bureaucratic institutions pose to both democratic government and the human spirit, he also found these institutions, which he believed made decisions according to "purely objective considerations" [32] without regard to preference or favor, a formidable ally to the principle of "equality of treatment before the law." [33] Weber understood that, in an attempt to go about their business in an efficient and objective way and in accordance with established rules of procedure, administrative officials would provide each individual in society with equality of treatment regardless of social status. This claim is relevant in the context of democratic theory and has significant implications with regard to the American political system.

Students of American government have come to realize that what is promised constitutionally as government by the people is carried out in reality as government in response to interest groups representing various "factions" within the popular community. [34] Apologists for this system are of the opinion that this multiplicity of factions is representative of the entire public. [35] However, critics of the system have recognized that the multiplicity of groups found within this pluralist system do not represent all segments of the community. [36]

Perhaps the most profound evidence of the system's failure at representation is the racial problem in America. [37] It serves to document a major institutional "dilemma" of democratic government. That dilemma might be described as an institutional arrangement which is most responsive to those groups representing influential members of society and is least responsive to those groups most in need of public service. To state the problem more specifically, the political system is not particularly responsive to the poor or minorities because these groups do not possess the social requisites for successful participation in politics. Given this situation, one might suppose that those governmental institutions which are most likely to allocate their goods and services in an equitable manner are those institutions which are least susceptible to political influences. It is for this reason that Weber's notion of bureaucracy as an institution which carries out its business on the basis of purely objective criteria without regard to preference or favor is significant. This is not to suggest that Weber saw the government bureaucracy as a totally apolitical institution. What he did argue, however, was that bureaucratic officials, who were not chosen by popular election and who were governed by fixed internal rules of procedures, were the most apolitical participants in the governmental process in a relative sense.

Whether or not one accepts the Weberian notion of bureaucratic equity, it certainly suggests several questions that are relevant to a discussion concerning the capability of a local public bureaucracy to be representative of and responsive to the clientele which it is supposed to serve. Three such questions are particularly relevant to the theoretical dimension of the present study: To what extent do bureaucratic institutions allocate their goods and services in an objective and equitable manner? Under what environmental conditions are the outcomes of the bureaucratic process most likely to result in an equitable allocation of goods and services? What role does bureaucracy play in terms of the general distributive process at the local level? The last question will be considered first.

The *distributive process* in local government takes place on at least *two levels*. One concerns the allocation of public resources *among different types of service functions*, the other concerns the allocation of public resources *within service functions*. Distributions within particular services are usually decided upon by officials within the bureaucracy. The distribution of resources among different services is usually determined outside the local government bureaucracy, either by a local chief executive, a local legislature, or officials at other levels of government. Usually it is a combination of all three. In any event, given that these latter kinds of decisions are often made by elected officials, they tend to be more political in nature than the former bureaucratic type.

The reason why distributions among services is significant from the perspective of the equity issue is quite straightforward. While most local services are available to most people, individual population groups use certain kinds of services more than do others. To put it differently, many local government agencies, because of the kinds of functions which they perform, serve a very limited clientele. Some agencies serve the poor, others serve the middle class, and still others serve both. Those agencies which provide social, compensatory, and certain kinds of developmental services tend to accomodate a predominantly poor clientele. Included among them are health, public housing and welfare programs. Middle class citizens tend to use such services less, either because they have no need for them (e.g., welfare), or because they enjoy the economic option of purchasing them in the private market (e.g., health and housing). The middle class, however, tends to show a preference for other kinds of services, such as public libraries and certain recreational and cultural programs. A third category of local services includes those functions which are needed, wanted and utilized by all population groups, regardless of class. These include, among others, police, fire, sanitation, sewage, and street maintenance services. While public education services might have traditionally been included in this third category, the demographic data on urban education suggests that it is becoming more and more a poor people's service dominated by a clientele which is being drawn increasingly from racial minorities. The data on New York City where the percentage of the school population composed of minorities rose from 40% to 70% in the last twenty years is a case in point. The pattern is consistent with other large urban centers.

The analytical distinction between policy distributions among services and policy distributions within services is significant for at least three reasons. First, it defines the limits of bureaucratic discretion in the distributive process. Secondly, it shows that bureaucratic institutions are not only participants in this process, but that they are potentially either the beneficiaries or the victims of its outcomes. Thirdly, it suggests a further question that asks whether those bureaucratic institutions which serve predominantly poor or noninfluential clientele do as well in that process as do other agencies. The evidence in the present study will suggest that they do not.

An analysis of the research literature on service distributions within particular urban service bureaucracies gives much credence to that notion of equity attributed to Max Weber. A number of multi-agency studies on several American cities suggest that internal rules of procedure which influence bureaucratic decision making contribute to a pattern of distribution which is fair and nondiscriminatory.[38] However, it must be emphasized that the general evidence appearing in this voluminous and growing body of research on urban bureaucratic service distributions is mixed. While some studies have found patterns of equity, others support an underclass thesis of discrimination. For this reason, it has become more important to define those environmental conditions which are more generally associated with patterns of equity.

In a recent and comprehensive anlaysis of the existing research literature, the principal investigator has attempted to identify those conditions.[39] Among the "conditions of bureaucratic equity" identified is a situation in which external political interference in internal agency decision making is minimal. Thus, the evidence seems to show that the more closed the internal process of decision making is, the more likely is its outcome to be equitable. The study also offers a hypothesis which holds that those local agencies which serve a predominantly poor and uninfluential clientele are more likely to fare poorly in the distributive process taking place in American cities under the present economic conditions of fiscal retrenchment.

The relevance of the present study to the findings and the proposition just cited is quite apparent. The New York City school system has been and will be described as an open system which must be responsive to a multiplicity of constituents. The New York City school system also serves a predominantly minority and poor clientele. When seen in the context of the existing research literature on local government service distributions, the difficulty which the New York City school system has in being representative of and responsive to its service clientele begins to fall into and is explainable by a more general pattern. This same pattern is also applicable to other school systems. School officials in general are accountable to a large number of constituents. This constituency includes not only the kind of interest groups to which most local government agencies must respond, but in a rather peculiar fashion, also includes the direct involvement of officials at other levels of government with whom urban school officials must share authority. This latter group includes state school officials, state legislators, federal officials in all branches of government, local government officials, and, from the perspective of the superintendent, an "independent" school board. Thus, notwithstanding a general understanding that school systems are to be remote from the political process, school systems are among the most open systems at the local government level. Taken in the context of the general research literature on urban distributions that has been cited, this openness may begin to explain why these systems sometimes have difficulty in responding to a limited service clientele composed of minorities and the poor.

While the clarity of the trend may vary from city to city, a general statement can be made that urban public education is increasingly becoming a poor people's service. Thus, the proposition that states that local services with a poor or uninfluential clientele are at a disadvantage in the local distributive process is generally applicable among urban school systems. While the local distributive process may vary between districts that are financially dependent and those that are financially independent, the principle still has general relevance. The principle is certainly relevant at the state level, where it has been shown across the country that urban school systems, particularly those with poorer populations, have been the victim of inequitable school finance formulas.[40]

The present study is intended to go beyond the usual focus of urban service distribution studies. While most research on this subject has focused on the issue of quantity, the present study will also be concerned with the question of quality. Quality service will be measured in terms of the system's capability to address the changing needs of its more diverse and complex clientele. It is in this context that the concepts of organizational responsiveness and organizational change are most relevant.

FROM HYPOTHESIS TO THEORY

Given the hypotheses that have been stated, the concepts that have been applied, and the literature that has been reviewed, it is possible to evolve the following three-point construct to be developed in the proposed study.

- The institutional arrangement that students such as Rogers and Sayre and Kaufman have described in terms of the relationship between the central school bureaucracy of New York City and its external environment is basically correct. However, it is not only an obstacle to internal management, control, and change, but it also hinders the capability of the institution to be responsive to its service clientele. The implementation of decentralization has not helped to alleviate this problem, but in fact, may have exacerbated it.
- The analytical distinction between organizational constituent and organizational client has significant normative implications for students of public administration concerned with the issues of representativeness, responsiveness, and equity.
- The existing research literature on equity in local government services suggests that the inability of some urban school systems to be representative of and responsive to the clientele they serve may be the result of a set of institutional conditions and arrangements which transcend their internal structure or management, and is more likely explained by examining the relationship between these organizations and their external environments.

THE SETTING

The case studies that will be developed in the following chapters represent a series of events that took place in New York City during the first three years of the Administration of Chancellor Frank Macchiarola. The early history of this Administration is particularly relevant to the research questions and normative issues posed, since a basic goal of that Administration has been to make the school system more responsive to the clientele which it is supposed to serve.

The reform strategy adopted by the Macchiarola Administration is based upon an educational philosophy which holds that all children can learn. This philosophy was put forward in response to a kind of thinking which became popular in the education profession during the nineteen sixties and early seventies, which held that social variables outside the school setting had a more significant impact on the achievement levels of students than did those efforts that went on in schools. It was not the social science literature to which the new Administration had taken exception so much as it was what was believed to be, a futile attitude that the literature had engendered among some educational practitioners. That attitude seemed to suggest that some students, because of their social, family, or racial background, cannot be taught. It carried with it the corollary that professional practitioners cannot be held responsible for the poor achievement levels of such students.

From a programmatic dimension, the implications of the Administration's philosophy can be seen on three particular levels. On the first level, while the Administration continued the efforts of the previous Chancellor with regard to racial desegregation, it also placed an emphasis on increasing and improving the educational opportunities for students who were outside the mainstream of the instructional process. This emphasis was evidenced by the initiation and support of new programs for children with handicapping conditions, children who were non-English dominant, children who were dropouts, and children who were holdovers.

On a second level, the Administration sought to raise the instructional standards and expectations of all children by recommending a new promotional policy in the elementary and middle grades and a new graduation policy for the high schools. At the same time that the administration tried to raise these standards and expectations, it proposed a gradualist policy of change supported by remedial programs so that students would not be penalized by a sudden change in policy.

On a third level, the Administration complemented its higher performance standards for students with a set of rising expectations for professionals within the school system. Inherent in the educational philosophy that all children can learn was a managerial emphasis of accountability which held professionals responsible for the achievement levels of students.[41] This new emphasis on management accountability led to the development of new management reporting systems at the central school headquarters,[42] the adherence to stricter standards for granting tenure, the disallowance of the use of correspondance courses by personnel in order to fulfill educational requirements, and an attempt to amend those state laws which govern procedures for disciplining and dismissing teachers.

This program of reform was developed in the shadow of a rather complex and confusing political, social, and economic climate pervasive in New York City at the time. The decline of the school system was seen by many as a contributing factor to the flight of the middle class, the relocation of business firms, and the general economic decline of the City. Thus, a public and political mandate existed for a general upgrading of public education. However, the political and economic situation in the City was such that the school system became a major victim of retrenchment policies that were carried out in response to the severe fiscal problems in the City.

THE PARTICIPANTS

The major part of this text focuses on the development of five case studies concerning substantive educational issues with which the school Administration was concerned. They focus on the role that various constituent groups played in determining the outcome of the policy process. These case studies are developed around the following research questions:

- Which constituents were responsible for developing the issue agenda?
- Were the policy priorities of these various constituents consistent with each other?
- How did these constituents, both individually and as a whole, affect the internal policy process of the school system?
- Which constituents actually participated in the decision making process?
- Which constituents were involved in determining how policy would be implemented?
- What political strategy and legal options did each constituent group use? What does that tell us about the general process of decision making in education, both in New York and elsewhere?
- To what extent did these constituents, both individually and as a whole, represent the wants and needs of the service clientele?
- Given the socio-economic status and racial composition of the service clientele, what relevance does the analytical distinction between client and constituent have to the issue of social equity?
- What does the nature and the outcome of the policy process observed tell us about the institutional capability of the school system to be responsive to the people it serves? To what extent can these observations be generalized to other large urban school systems?

In developing the cases, particular attention is given to the role played by those constituents to whom central school officials were accountable, or with whom central school officials shared power. However, it should be stressed that the role of other constituents which lack direct discretion but participate in the interest group process will also be considered.

The distinction being made here between these two types of participants in the policy process is not a new one. Sayre and Kaufman distinguished between those "core groups" which exercise decision making authority over specialized functional areas and those "satellite groups" which work on the fringes of the core to influence decisions in their favor.[43] The distinction is particularly relevant to the subject matter of this study because it is the existence of so many core groups in educational policy making which makes it so unique among local services. Thus, in comparing the situation of the school superintendent in New York City with that of other agency heads, Sayre and Kaufman concluded that "he exercises his powers in a more complex environment," his "difficulties and frustrations are greater," and his "opportunities for initiative are squeezed within narrow confines."[44]

The complexity and difficulty of the situation which Sayre and Kaufman describe concerning the school superintendent is not peculiar to New York. While organizational and legal arrangements at the local level vary from city to city, all superintendents must deal with an array of decision making bodies at other levels of government which exercise discretion over school policy. Thus, it is believed that by focusing on the role played by these core groups, the findings and conclusions of the present study will be of relevance to school systems outside of New York City.

Among the core groups or institutions that are dealt with as major actors in the case studies are the following:

- The central Board of Education which serves as the major policy making body of the school system. This lay board consists of seven members. Five are appointed by each of the respective Borough Presidents in the City and two at large members are appointed by the Mayor. Given their varied political and geographical orientations, Board members often view policy options and priorities from different perspectives. Thus, while the Board makes decisions as a single voting body, its membership does not always reflect unanimity or consensus on policy issues. In this sense, the Board itself becomes a source of cross pressures for central administrators. The central Board of Education elects its own President who serves as a chairperson, and it appoints the Chancellor of Schools, who serves on a contract basis.

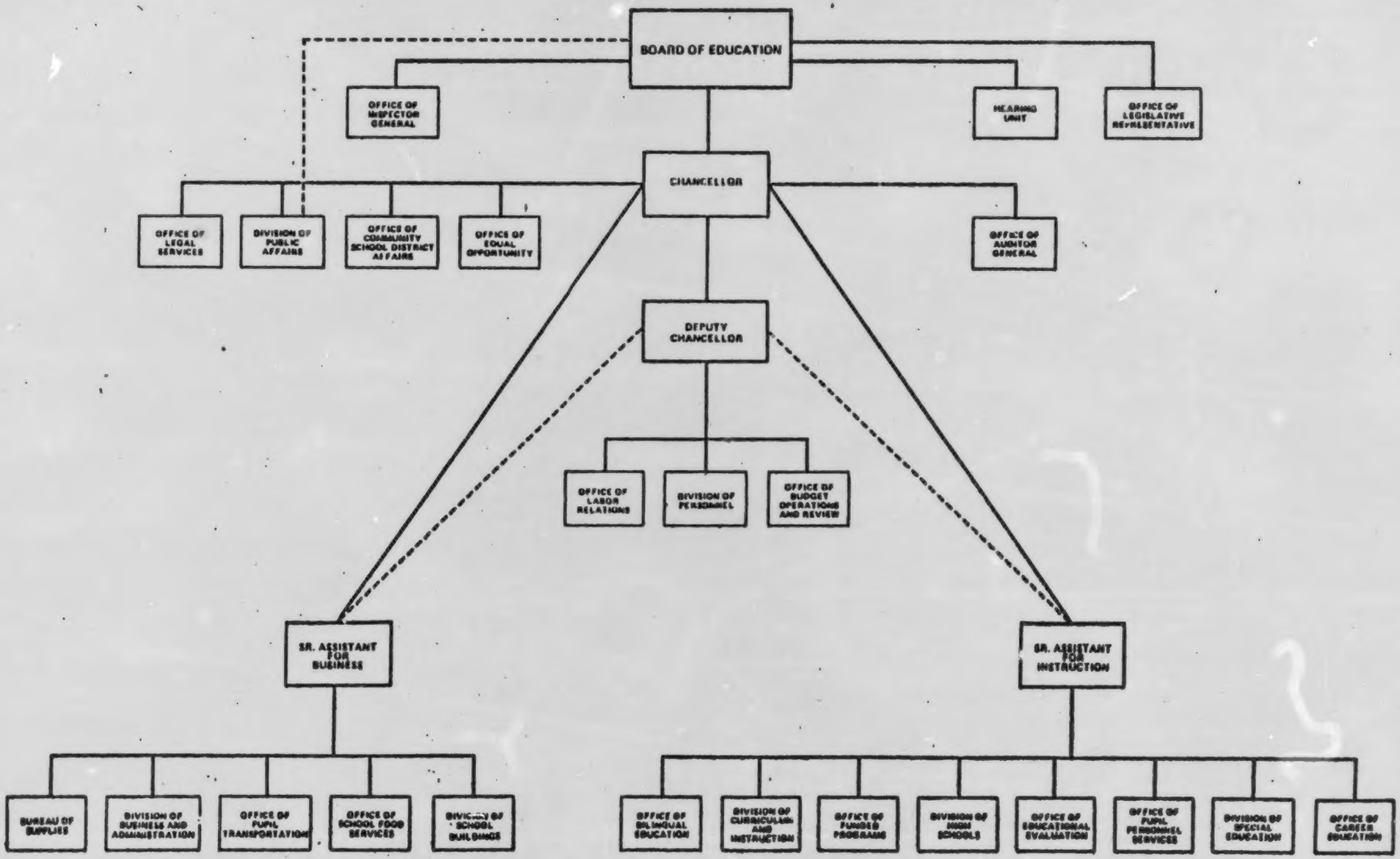
- The Chancellor who serves as the Superintendent of schools is the chief executive officer of the school system and is responsible for its overall operation. The title Chancellor was created in 1968 with the implementation of decentralization to signify the fact that the chief executive of the school system, unlike the Superintendents prior to 1968, shares responsibility with community school district Superintendents. However, the Chancellor has still maintained much authority. He appoints the Executive Directors of the Divisions of High Schools and Special Education. He also appoints the heads of all business and support units at central headquarters. (See Illustration I-1.) It is the responsibility of the Chancellor to set minimum educational standards for all schools within the City, including those elementary and middle schools which report to local community Superintendents. The Chancellor is also responsible for enforcing all federal, state, and local laws and regulations. Thus, while the part-time lay Board of Education has legal authority as the major policy making body of the school system, the Chancellor and those executive officers that report to him represent the central administration of the school system.

- The thirty-two local Community School Boards and their Superintendents who, since the enactment of decentralization in 1968, are responsible for the day-to-day operation of elementary and intermediate schools. Community School Boards are popularly elected for two-year terms. These boards select a local Community Superintendent who is responsible for administering the schools within the district. The Superintendent, in accordance with the guidelines and regulations that are established centrally, has authority over the selection of curriculum and staff. According to some students of the subject, much ambiguity exists in the decentralization law concerning the delineation of powers between the central administration and the local districts.[45] Thus, while the central administration enjoys much authority, the Chancellor is often in a position where he must persuade rather than command community officials to follow his leadership.

- The Mayor and the City Government upon whom the school system is fiscally dependent. Because the school system is fiscally dependent upon the City for its local tax levy budget, its budget must be appropriated with the approval of the Mayor, a Board of Estimate, and a City Council. The Mayor, through his Office of Management and Budget, is responsible for preparing the expense budget of all local agencies in the City. This budget is then approved by the Board of Estimate, which includes the President of the City Council, the Comptroller, the five borough Presidents, and the Mayor himself. Final approval comes from the City Council, a popularly elected local legislature. Fiscal dependency is another source of cross pressures within the school system. While responsibility for raising revenue and paying the bills for education falls with City officials, it is school officials who are responsible for providing services. In recent years, under the burden of local fiscal problems, this arrangement has become a source of tension.

ILLUSTRATION I-1

CENTRAL ADMINISTRATION — NEW YORK CITY PUBLIC SCHOOLS


BOARD OF EDUCATION
OFFICE OF INSPECTOR GENERAL
HEARING UNIT
OFFICE OF LEGISLATIVE REPRESENTATIVE
CHANCELLOR
OFFICE OF LEGAL SERVICES
DIVISION OF PUBLIC AFFAIRS
OFFICE OF COMMUNITY SCHOOL DISTRICT AFFAIRS
OFFICE OF EQUAL OPPORTUNITY
OFFICE OF AUDITOR GENERAL
DEPUTY CHANCELLOR
OFFICE OF LABOR RELATIONS
DIVISION OF PERSONNEL
OFFICE OF BUDGET OPERATIONS AND REVIEW
SR. ASSISTANT FOR BUSINESS
SR. ASSISTANT FOR INSTRUCTION
BUREAU OF SUPPLIES
DIVISION OF BUSINESS AND ADMINISTRATION
OFFICE OF PUPIL TRANSPORTATION
OFFICE OF SCHOOL FOOD SERVICES
DIVISION OF SCHOOL BUILDINGS
OFFICE OF BILINGUAL EDUCATION
DIVISION OF CURRICULUM AND INSTRUCTION
OFFICE OF FUNDED PROGRAMS
DIVISION OF HIGH SCHOOLS
OFFICE OF EDUCATIONAL EVALUATION
OFFICE OF PUPIL PERSONNEL SERVICES
DIVISION OF SPECIAL EDUCATION
OFFICE OF CAREER EDUCATION

- The state government, including the state Commissioner of Education, the Board of Regents, and the State Legislature who establish statewide educational standards, write laws, and provide support for the local school system. The Board of Regents is appointed by the state legislature and it, in turn, selects a Commissioner of Education. While general responsibility for educational policy and standards rests with the Board and its Commissioner, it is the Legislature which enacts the State Education law, as well as laws affecting the working conditions of teachers and other school employees. The State Legislature also appropriates money to local school districts according to predetermined formulas.

- The federal government which provides financial support to the local school system and establishes legal guidelines for the delivery of educational services. The most significant contribution of federal funds to the local school system comes in the form of compensatory aid programs such as that provided through Title I of the Elementary and Secondary School Act. The federal government also has the power and authority to enforce its own legal and regulatory mandates through the courts, the Office for Civil Rights, and the Department of Justice. In the form of both compensatory aid and legal enforcement, the federal voice has often been sounded in the name of equity. However, in setting basic legal guidelines for providing services for such groups as the poor, the handicapped, and the non-English dominant, the federal government has often moved against both the priorities and fiscal means of local officials. Thus, the federal role is often a source of conflict in the local educational process.

The above list of decision makers or authorities that affect the educational process in New York is certainly not meant to be exhaustive. One might include the state governor who provides legislative leadership at the state level. One might also include the State Financial Control Board which, at least to some extent, represents the increased role of the financial community in New York City government, and has authority to approve the total budget package of the City. The list of potential constituents is endless. However, those which have been chosen represent that "core group" of decision makers who have a regular, ongoing, and immediate impact on educational policy making.

The case studies give attention to those various "satellite" or interest groups which, although lacking authoritative discretion, work within the policy process to influence decisions. First and foremost among these is the United Federation of Teachers (UFT), which represents those "street level bureaucrats"[46] whose cooperation and support is needed if top level policy decisions are going to have their intended outcomes. As an interest group, the role of the UFT in educational policy making is so immediate, profound, and ongoing that its level of influence rivals that of the "core groups" that have been mentioned.

In order to round out the list of key satellite or interest groups which participate in educational policy making, one might add such community-based lobbyists as the Public Education Association, Advocates for Children, the United Parents Associations, and the Educational Priorities Panel; such professional or labor associations as the Council of Supervisory Associations, and District Council 37 of the American Federation of State, County, and Municipal Workers; and a variety of neighborhood, ethnic, and religious groups who get involved in educational politics from time to time.

FOOTNOTES

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CHAPTER TWO

THE BATTLES OF THE BUDGET

In no other sphere is the political liability of a poor clientele so apparent as it is in the budget process. The capability of an urban school system to procure the kind of financial support that is needed in order to provide adequate service is directly linked to the composition of its clientele, the political power of that clientele or, at least, its perceived power among policy makers. The structure and content of the budget is a key determinant of the quantity, quality, and kinds of service that will be provided within a school system. Thus, the budget is more than a financial document. It is a symbol of public priorities. It is a barometer of political support. It is a manifestation of individual and interest group power. The budget establishes the parameters within which innovation and reform are set. The process in which it is developed is representative of the kinds of political and institutional controls to which the providers of a service are subjected.

Prior to the 1970's, the budget process in public sector organizations was understood to be an incremental one in which the funding level for a particular agency, service or program was usually determined by the level of the previous year.[1] In most cases this incremental approach to budgeting could be expected to reap at least slightly larger appropriations than it had before, thus contributing to the increasing public share of a growing gross national product. The seventies, which arrived on the heels of a national recession and a more critical public attitude towards government spending, altered the entire dynamic of the budget process. The managerial techniques of the sixties which were designed to make public sector activity more efficient and effective, were replaced by techniques that would engender a more systematic approach towards retrenchment.[2] Thus, the typical managerial concerns of "how to do better" gave way to the more painful question of "what can be done without?" The proverbial political question of "who gets what?" was replaced by a more troubling and controversial "who gets less?"

Some public officials initially saw the new politics of retrenchment as an opportunity to impose long-needed economies in government and to eliminate waste. However, as we moved further into the seventies, it was becoming ever more apparent that retrenchment would really be translated into a substantive reduction in service.[3] As one high-ranking budget official in New York City explained it, "Up until about 1977 our major concerns had to do with reducing excess and making administrative cuts. We wanted to keep expenses down. After that we really became involved in service reductions."[4] Thus, by midpoint within the decade, the realities of cutback management changed the stakes of the budget process. Client groups that were once preoccupied with increasing the level of funding made available to them were now fighting to hold on to what they had. To make matters worse, given the rapid growth of inflation during the seventies, even maintaining a constant dollar appropriation would not be sufficient to maintain a comparable level of service.

Local school districts were among the major victims of the fiscal crisis which struck American urban centers during the seventies. The stagnant process of their recovery would continue into the eighties. According to a report published by the Council of Great City Schools in early 1981, all of its twenty-eight member school districts were expected to face some degree of financial difficulty during the coming year. [5] Among these, Chicago was confronted with a $15,000,000 deficit and Cleveland with a deficit of over $46,000,000. That same year, it would take a court order to keep the Boston schools in operation because they had run out of money by April. The Boston schools opened in September of 1981 with the layoff of over 1500 teachers, a reduction of more than 20% of their teaching staff. That same September, the Philadelphia schools did not open at all because of a teachers' strike in protest of the layoff of 3500 teachers and the recission of a 10% pay increase that had been provided in their contract.

Urban school systems were enduring this shrinkage in their operating budgets at the same time that they were experiencing a transformation of the populations which they serve. The middle class was taking its children out of inner city public schools and placing them in private schools or moving out to the suburbs. What was left was an increasingly poor population that was disproportionately composed of racial and linguistic minorities. Some have argued that it was the schools themselves which were responsible for this mass exodus. No doubt the declining literacy rates among public school students had contributed to the decline in confidence in the schools. Many would also contend that the flight to the suburbs was at least in part motivated by the disruptive implementation of forced integration and bussing programs. Whatever the causes of the changeover in the urban school population, and by no means are they simple, one of the major outcomes of this phenomenon was a significant decline in political support for urban and public education. As the middle class began to disassociate itself from urban schools, there began to develop an unprecedented dichotomy over the issue of public education. That dichotomy separated the middle class taxpayer from the urban poor. While the middle class began to see its connection with public education as primarily a financial one, the urban poor remained service recipients. While the middle class often applauded the cutback in public spending for education, the poor would look with regret at the declining services being made available to their children. Here, as in no other place, should one begin to recognize the significance of the constituent-client distinction.

The disinvestment in public education that began to take place during the seventies was symptomatic of a changing national mood. The proponents of that change would portray it philosophically as a reevaluation of the function of the government which both inappropriately and unsuccessfully had cast itself in the role as agent of social change. Its critics would describe it as a declining social consciousness. These philosophical differences had significant social implications for a people who had historically recognized the importance of public education as a means of social mobility for the poor. Because the consequences of the debate were so crucial, its battles would be fought and its outcome decided in the arena of politics.

The sixties had been a period of rapid growth in educational spending. As the nation began to respond to the dictates of a technological society, as the sons and daughters and grandchildren of a generation of immigrants began to recognize the value of education, and as public officials began to address the needs of racial and linguistic minorities, education became a key national priority. The expansion of spending for education took place on all levels of government. Between 1962 and 1972, the Office of Education's budget grew from $477 million to $5.5 billion. However, the federal share of overall expenditures for elementary and secondary education only grew from 4.4% in 1962 to a little more than 7% in 1976. From 1960 to 1970, federal expenditures increased by $1.9 billion, state expenditures by $9.86 billion, and local expenditures by $11.74 billion. [6]

The general trend notwithstanding, it was federal intervention in the sphere of education that was most responsive to the interests of minorities and the poor. Introduced in the mid-fifties on a judicial level through the historic Brown decision, the federal government first assumed the role as a protector of educational equality by challenging the historical violations suffered by blacks at the hands of the states. The federal agenda on behalf of educational equity did not take on a financial dimension until 1965. That commitment was carried out through the enactment of the Elementary and Secondary Education Act (ESEA). [7] Under Title I of this Act, which was a cornerstone to Lyndon Johnson's Great Society program, federal education funds were appropriated on the basis of a poverty factor. Between 1965 and 1966, federal grants for elementary and secondary education jumped from $1 billion to $2 billion. By the end of the decade, spending under Title I reached nearly $3 billion. [8] It was the greatest infusion of federal education funds on behalf of the poor in the history of the nation.

The enactment of Title I specifically and ESEA in general was a major testimony to the political leadership of Lyndon Johnson. However, such leadership and legislation were made possible through the formation of a strong Congressional coalition of Southern Democrats and Northeastern liberals from states with large urban centers and numerous electoral votes. It was that Democratic coalition which had made liberal presidential politics feasible since the days of Franklin Delano Roosevelt.[9] By 1968, this coalition began to crumble. Nixon strategists called upon Southern conservative Democrats to stand behind their Republican candidate, and began to tap a white urban and suburban electorate in the Northeast which was becoming disenchanted with the liberal politics of the sixties.[10]

Richard Nixon interpreted his own election as a mandate to undo the federally funded social programs that had grown out of the Great Society. His first budget request for elementary and secondary education was $400 million less than that of his predecessor, the lowest since 1965.[11] While the Democratic majority which held on to the Congress was able to prevent a dismantling of Lyndon Johnson's legislative legacy, it was quite clear that the generous growth in spending for education that had typified the previous decade would now level off. Thus, the former director of the National Institute of Education, Michael Timpane, was both perceptive and prophetic when he wrote, "By 1972, every one of the financial and demographic pressures for an additional federal finance commitment to education had abated; many promised actually to recede."[12]

The proponents of a strong federal role in education enjoyed short though rocky respite with the Carter administration, whose tenure was marked by the rising power of a strong conservative voice in the Congress. By

1980, the nation would elect Ronald Reagan and with him a more sympathetic Congress which was prepared to carry out the mandate that had just begun to be heard under Richard Nixon. The Reagan administration promised to bring about a deactivation of the federal role in education, less federal spending, and a transfer of discretion to the states. It had been the denial of equal rights protections by some of the states which motivated federal intervention in the first place. Now Ronald Reagan was pledging a retreat from that original federal commitment. His proposal for block grants would provide the states with a larger voice in deciding how federal education dollars could be spent.

Speculation about the future distribution of federal dollars through the states may be informed by several decades of scholarship on state governments, none of which proves encouraging for the prospects of urban education or its clients. The history of state government in the United States is a tale of rural domination which has generally worked against the interest of cities.[13] Through its judicial activism, the Warren Court attempted to rectify the consequences of this anti-urban bias when it outlawed the malapportionment of legislative seats in the various statehouses. Based upon the principle of "one man, one vote," the Court mandated a new pattern of legislative districting that would guarantee the urban dweller equal representation in the statehouse.[14] However, the net result of the "reapportionment revolution" which took place was a redistribution of legislative seats to the suburbs, the place where population growth was occurring, and whose representatives proved to be no more sympathetic to the interests and needs of an urban population than were their rural colleagues.

By 1968, there began to appear a significant line of research which demonstrated a direct correlation between educational spending within the various states and the property wealth of local school districts. [15] Despite the legal responsibility of the states to provide individuals with a free and equal education and despite the existence of state school finance formulas that supposedly protected such rights, the research indicated that children in property-rich districts were enjoying larger allocations of educational funds than children in poor districts. The issue of state school finance was by no means a solely urban issue, for many of the property-poor districts were either suburban or rural. However, given the differing service needs of the urban school population, the higher costs of service, and the peculiar fiscal burdens of the cities, [16] inner-city schools were particularly hard hit by the maldistribution of educational funds that were imposed by many of the states.

The most significant challenges to the existing state finance formulas have come through the courts. The first such case was brought in California in 1971. The Supreme Court of that state found in *Serrano v. Priest* [17] that the state system of educational finance was discriminatory against the poor and therefore in violation of the fourteenth amendment of the federal Constitution and state constitutional law. Soon after the *Serrano* decision, the state courts of Minnesota, Texas, New Jersey, and Michigan handed down similar decisions. Then in 1973, the Supreme Court handed down a decision in *San Antonio School District v. Rodriguez* [18] which at first appeared to be a setback in the litigation on school finance reform. In that case, the Supreme Court held that disparities in the *per capita* expenditures for school children was not a violation of the equal protection clause of the federal Constitution since education is not a guaranteed federal right. However, the Supreme Court did leave the way open for challenges based upon state constitutional law. Two weeks after the Rodriguez decision, the Supreme Court of the state of New Jersey unanimously upheld a challenge to the school financing formula on the basis of state legislative and constitutional enactments. The New Jersey court in Robinson v. Cahill [19] issued an opinion which was based on the entitlement of each child to a "thorough and efficient" education under state law. Thereafter, a spate of school finance cases proceeded which challenged existing state formulas on the basis of state law. At the time of this writing, more than half the states in the nation have instituted some type of school finance reform. However, to what end the litigation and reforms have come remains an open question. [20] The outcome of school finance reform remains very much in the hands of the state legislatures. These bodies, being the political institutions that they are, remain reluctant to enact reforms that will redistribute funds away from the wealthier, more politically powerful districts in their jurisdictions in favor of the poorer districts which are less capable of exercising a strong influence.

SCHOOL FINANCE REFORM IN NEW YORK STATE

New York State fits well into the national pattern which shows a correlation between school spending and local property wealth. In fact, in New York State, the problem is particularly troublesome. A study of thirty-five states performed by the Education Commission of the States in 1979 has shown that, according to two different disparity measures, New York ranked first and third in comparison to the other states.[21] In 1978, the per pupil property wealth for the richest school district in New York State was $612,733, while that of the poorest was $12,026, a ratio of 51 to 1.[22] Lawmakers in Albany have recognized the fact that education is constitutionally and legally a state function, and have designed a school finance formula which would supposedly alleviate the disparities in education spending that grow out of local funding capability. However, the state financing formula now in existence has only gone so far in overcoming these disparities. In 1978, the highest spending school district in the state spent $5753 per pupil, while the lowest spent $989 per pupil, a ratio of 5.8 to 1.[23]

A brief overview of the school finance formula for New York State shows why it has not succeeded in closing the funding gap among its more than seven hundred school districts.[24] Since the presumed goal of the New York State school finance formula is to bring greater equity to the spending levels among the local districts, two basic criteria are used to determine a particular district's share of the state aid funds: full value of taxable property and students in average daily attendance. The higher the property value of a district, the lower its share of state funds; the higher the average number of students in daily attendance, the higher the entitlement. Given the fact that the cost of educating some children is more than that of others, children are "weighted" according to different classifications of service need. For example, secondary school students are weighted more heavily than elementary students; students with reading scores significantly below grade level are weighted more heavily than those who are not; handicapped children are weighted more heavily than nonhandicapped. Thus the overall scheme of the state finance plan seems to have all the ingredients that would make for an equitable distribution of education funds among the districts. However, there exist exceptions, limits, and modifications of the general rules which undermine the overall purpose of the school finance formula.

First of all, the state has a set ceiling of $1700 per student which it will allocate to any particular district. All expenditures above the $1700 level are funded entirely by local taxes. Given the fact that the average per pupil expenditure in New York State was well over $2500, this imposes a significant limit on the capability of the state aid formula to readjust spending levels. Secondly, the state formula also assures that each district is guaranteed $360 per pupil regardless of wealth. Therefore, a large portion of the state education money is allocated without respect to need. Third, a "save harmless" guarantee written into the law assures that no district will receive a total amount of aid that is smaller than its allocation in the previous year. Therefore, there is no downward adjustment for decreasing enrollment or increasing wealth. Fourth, a cap assures that no district receives an increase of more than 13% above what it received the previous year, regardless of enrollment or attendance. Finally, the funding formula does not consider the differing costs of doing business among the various districts around the state. Despite hopes to the contrary, the New York State education finance law is a state-imposed mechanism which perpetuates inequities in spending. Thus, in 1978, the average per pupil spending level in those districts in the highest decile grouped according to wealth was $2648, while the average per pupil spending for those districts in the lowest decile was $1455. The wealthier districts in the state were spending 81% more per child than the poor districts.[25] It was this kind of inequity which brought New York State into court on the issue of school finance reform.

In 1976, twenty-seven local school districts from New York State initiated litigation which challenged the school financial formula.[26] They alleged that the formula discriminated against property-poor districts in the support of primary and secondary education. The plaintiffs based their arguments on three major points: the denial of equal protection guaranteed by the New York State Constitution; a violation of the Education article of the New York State Constitution which requires a statewide system of common schools; and a violation of the fourteenth amendment of the United States Constitution.

Several months after the filing of the original complaint, the school boards of New York State's four largest urban districts - New York, Buffalo, Rochester, and Syracuse * - entered the case as plaintiff intervenors. While these larger districts were in fact "property rich" in comparison to many of the smaller districts in the state, they presented a rather novel and innovative argument regarding the impact of state school finance plans on inner-city schools. This line of argument, which has become known in the literature and the law under the general term "municipal overburden," added an urban dimension to the ongoing campaign for school finance reform.[27] The plaintiff-intervenors put forward a four point case:

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* Buffalo had been one of the original twenty-seven plaintiffs.

- They argued that because cities must provide a number of municipal services within their jurisdictions which other districts do not require, and which drain off tax dollars that might ordinarily be given over to education, the present formula is irrational and discriminatory.
- They argued that because of the higher cost of educational services in cities, the "equalizing" formula of the state does not allow city districts the same purchasing power as other districts.
- They argued that because cities have a higher rate of student absenteeism than other districts, a funding formula based on average daily attendance rather than actual enrollment is irrational and discriminatory.
- They argued that because cities have a greater concentration of disadvantaged, handicapped, and other students with special needs, the present formula is irrational and discriminatory.

After 122 days of trial, 128 witnesses and over 400 exhibits, the trial of Levittown v. Nyquist was concluded on January 12th, 1977. [28] State Supreme Court Judge J. Kingsley Smith finally rendered an opinion on June 23rd, 1978, and issued a judgment on December 22nd, 1978. [29] He ruled in favor of both the plaintiffs and the plaintiff-intervenors. He found factually that the level of educational expenditures among school districts is directly related to their property wealth. He also found the disparity in expenditures to have an impact on the level of educational services provided to students. In accordance with the line of reasoning that came out of the San Antonio v. Rodriguez decision, Justice Smith found that although the inequities in the school finance plan do not violate the "equal protection" clause of the federal constitution, it does violate equal protection rights and the educational entitlements of children that are guaranteed in the state constitution.

In September of 1978, three months following Justice Smith's opinion and three months prior to his decision, Governor Hugh Carey and Chancellor of the State Board of Regents Theodore M. Black announced the creation of a Special Task Force on Equity and Excellence in Education. The charge of the Task Force, to be headed by former state regent Max Rubin, was to evaluate and identify alternatives which were fiscally sound and constitutionally acceptable. Its thirty-five person membership included educators from both the private and public schools, government officials, and representatives of the business and labor communities. The Task Force published a First Interim Report in September of 1979. Then, a year later, it published a more extensive Second Interim Report which presented basic research findings regarding the case. The report confirmed the general findings that had come out of the Supreme Court decision. Moreover, to the amazement of some and the chagrin of others, the research report found that spending differences in New York State had not diminished between the 1974-75 school year, (from which the data in the suit was derived), and the 1977-78 school year (from which the data in the Task Force report was derived), but that in the most extreme cases, spending differences had increased. During this period, the difference between the per pupil spending rate in the richest district and the rate in the poorest district had changed from a ratio of 5.1 to 1 to ratio of 5.8 to 1. [30]

In the meantime, on April 7th, 1980, the State argued its appeal of the original decision handed down by Judge Smith. The answer on that appeal finally came down on October 26th, 1981 with a ruling from a four-judge panel of the Appellate Division of the State Supreme Court. The

Court upheld the original decision and found that the existing financing system impinges upon "the important right of education guaranteed to all children of this state." [31] It also upheld the "municipal overburden" argument of New York City and the other three large urban districts of the state which had entered the case as plaintiff-intervenors. Shortly after the handing down of the forty-two page Appellate Court opinion by Judge Leon Lazer, State Attorney General Robert Abrams announced his intention to take the appeal to the State's highest court. Given the unanimity of the Appellate Division ruling, speculation suggested that a final Court of Appeals ruling would be both speedy and affirming. However, regardless of the temporary optimism that grew out of the favorable and somewhat surprising outcome of the legal battle for school finance reform, the fact remained that the final resolution on the issue would be legislative and political.

The New York State legislature can be expected to exhibit the same kind of reluctance with regard to school finance reform as that which has been observed elsewhere. To begin with, few lawmakers would be optimistic about the prospects of a plan which will radically redistribute the present amount of funds available for education in a way that would penalize many politically favored districts. What the legislature had been doing instead since the original Levittown decision, was to support incremental measures that would supplement the allocations to "property-poor" districts. These adjustments were limited and were summarily dismissed by Judge Lazer as "insignificant." However a resolution to the school finance reform issue is worked out in New York, all factors suggest that in order to be effective, the remedy will undoubtedly prove expensive. An estimate by the Special Task Force appointed by the Governor put the cost at $1 billion per year. Legislators in Albany have been circulating a figure of $2 billion per year, while some state budget officials have suggested that the cost could run as high as $7 billion annually. This funding problem is further exacerbated by New York State's already high level of education spending. According to a Citizens' Public Expenditure Survey based upon the federal Department of Education's National Center for Education Statistics, New York State ranks second in the nation on per pupil spending in education; surpassed only by the State of Alaska. [32] Thus, any significant addition to the state education budget in New York seems both unfeasible and unlikely, particularly in a time of national recession and public sector retrenchment.

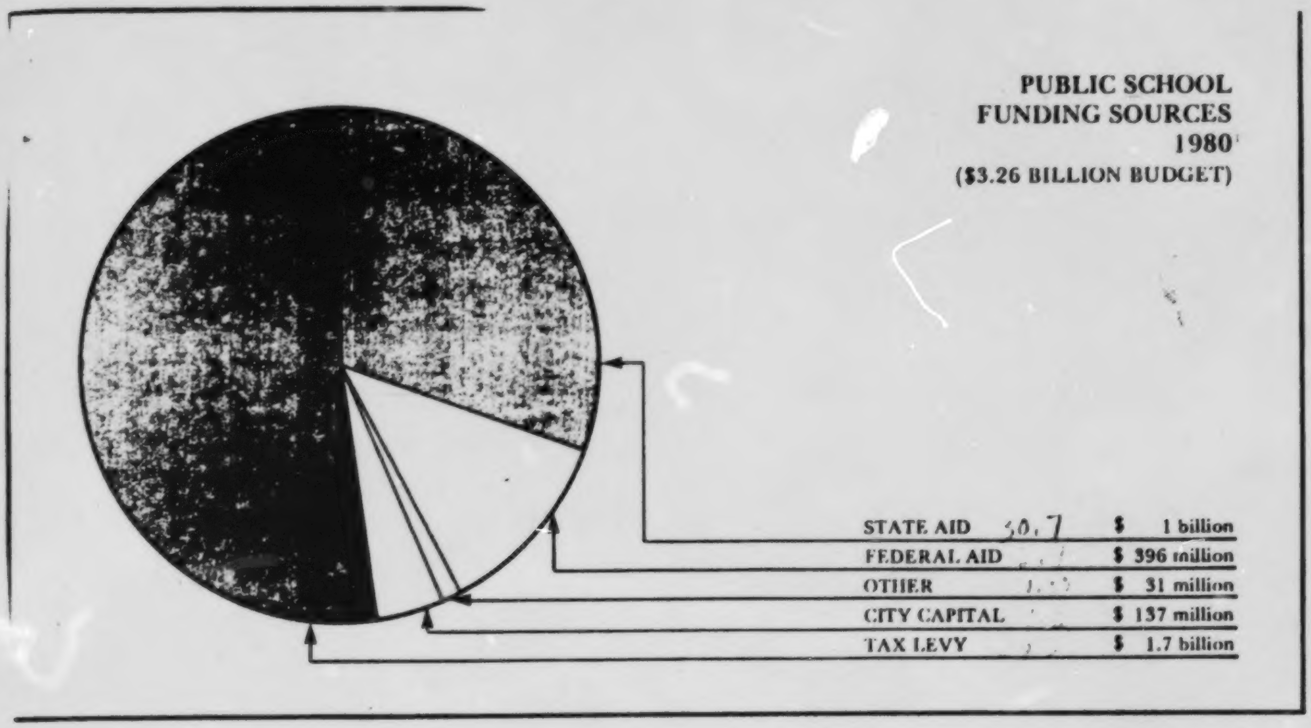
Despite the victories won in the courts by property-poor school districts and their urban counterparts, a meaningful reallocation of state education funds on behalf of the plaintiffs remained far from imminent. Moreover, while to a large degree the obstacles in the path of reform are located in the Albany legislature, state level politics tells only part of why an urban school system like that of New York City does not get its fair share of state operating funds. The other major aspect of the issue concerns politics at the local level. The New York City school system, like those in the other large cities of the State, is a dependent school district. This not only means that the City's municipal officials determine the size of its locally supported tax levy budget, but it also means that state operating funds for education must be distributed through the municipal government. This system of intergovernmental finance puts the City school system in a rather vulnerable position, particularly at a time when local governments are going through a period of financial austerity and retrenchment. With regard to local funds, fiscal dependence means that the school system must compete for support with other municipal services such as police, fire, and sanitation, all of which have a direct reporting relationship to the mayor, and many of which have more widespread and significant political support than the public schools. With regard to State funds, fiscal dependency has given rise to a practice called "supplantation." Supplantation is a tendency on the part of local governments to reduce tax levy funding in response to a growth in intergovernmental aid. The practice of supplantation is a reminder that the question of whether a school district like New York gets its fair share of state operating funds will not be determined at any one particular level of government, but it will be the outcome of a very intricate process of intergovernmental finance that is carried on between the City and the State.

THE NEW YORK CITY SCHOOL BUDGET: RETRENCHMENT AND SUPPLANTATION

In the 1980 fiscal year which began on July 1st, 1979, the total funding for the New York City public schools was $3.26 billion. Of this amount, $1.7 billion (50.6%) is derived from local tax levy sources for operating expenses and $137 million (4.2%) is derived from the City capital fund. Of the remaining dollars in the budget, approximately $1 billion (30.7%) comes from State revenue, $396 million (12.1%) comes from federal revenues, and $31 million (1%) comes from other outside sources.[33] (See Illustration II-1.)

Thus, while the larger part of the school budget is received from local sources, the contribution made through external sources - especially state aid - is a significant one.

ILLUSTRATION II-1



PUBLIC SCHOOL
FUNDING SOURCES
1980
($3.26 BILLION BUDGET)

STATE AID	30.7	$	1 billion
FEDERAL AID		$	396 million
OTHER		$	31 million
CITY CAPITAL		$	137 million
TAX LEVY		$	1.7 billion

Source: "Chancellor's Annual Report, 1979-1980," New York City Public Schools, 1981, p. 27.

In the 1980 fiscal year, the total expense budget of the school system, (which excludes capital items), was $3,111,543. This is the real operating budget for the school system from which it pays its daily expenses. As indicated in Illustration II-2, 63% of the total amount of this funding was devoted to direct instructional programs (i.e., classroom instruction, school and field supervision), 4% was given to indirect instructional programs (i.e., counselors, attendance, psychologists, etc.), and 10% to ancillary pupil support programs (i.e., security, transportation, lunch). Of the remainder of the funds, 8% was spent on the upkeep of the system's more than one thousand school buildings (custodial, maintenance, and fuel), and 3 1/2% was given to citywide and district level administration (i.e., personnel and business matters). The remaining 8% was divided between miscellaneous expenses (1.5%) and the costs of debt service (6.5%), the latter of which was becoming a more important part of the total city budget as interest rates for borrowing were on the rise. [34]

As is the case with other urban school districts throughout the nation, the New York City public school system began to experience an enrollment decline toward the second half of the nineteen seventies. Between 1978 and 1981 alone, public school enrollment in New York declined from 1,370,000 students to approximately 950,000. Critics of the spending practices of the school system have often argued that such enrollment declines should have allowed for a decrease in the overall expenses of the school system. However, such expectations do not take into consideration the rising costs of doing business that is due to inflation. Nor do they take into consideration the change in the mix of services that has occurred within the school system over recent years which has increased the per pupil operating expenses. The most significant of these changes in service has occurred in the area of special education, where in an effort to comply with federal laws for the education of the handicapped, enrollment had more than doubled between 1978 and 1980. Since the cost of educating a child in special education is

ILLUSTRATION II-2

NEW YORK CITY BOARD OF EDUCATION
1979-1980 BUDGET HIGHLIGHTS

The Board of Education will spend $ 3,002,321,000 delivering services to 960,327 public school pupils*, plus an additional $ 109,222,000 for non-public and adult education. This totals to a 1979-1980 budget of $ 3,111,543,000**

SELECTED STATISTICAL INFORMATION-PUBLIC SCHOOL PUPILS

FUNCTIONAL AREA	BUDGET (M = 1,000,000)	AVERAGE COST PER PUPIL	PERCENT OF TOTAL BUDGET
Direct Instructional Programs (Classroom Instruction, School and Field Supervision)	$ 1,956 M	$ 2,037	63 %
Indirect Instructional Programs (Counselors, Attendance, Psychologists, etc.)	$ 127 M	$ 133	4 %
Ancillary Pupil Support Programs (Security, Transportation, Lunch, etc.)	$ 321 M	$ 334	10 %
School Buildings (Custodial, Maintenance, Fuel, etc.)	$ 248 M	$ 258	8 %
City and Districtwide Administration (Chancellor, Personnel, Business Administration, District Supperintendents, etc.)	$ 108 M	$ 113	3½ %
Miscellaneous Expenses (Unemployment Insurance, Collective Bargaining Reserve, etc.)	$ 41 M	$ 42	1½ %
Debt Service	$ 201 M	$ 209	6½ %

INSTRUCTIONAL/ ORGANIZATIONAL LEVEL	BUDGET		AVERAGE PER PUPIL COST	PERCENT OF TOTAL REGISTER
	AMOUNT (M = 1,000,000)	PERCENT OF TOTAL		
Elementary	$ 1,181 M	39 %	$ 2,774	44 %
Junior High	$ 622 M	21 %	$ 3,236	20 %
High School	$ 790 M	26 %	$ 2,716	30 %
Special Education	$ 409 M	14 %	$ 7,958	6 %

* AUDITED OCTOBER 31, 1979 REGISTER.

** PENSION AND DEBT SERVICE ARE INCLUDED IN THIS AMOUNT. ALTHOUGH THESE TWO ITEMS ARE DIRECTLY RELATED TO PUBLIC SCHOOL COSTS, THEY ARE LOCATED IN NON-BOARD OF EDUCATION BUDGET CODES.

Source: "A Functional Analysis of the 1979-1980 New York City Board of Education Budget," Office of Budget Operations and Review, Board of Education of the City of New York, June, 1980, p. II.

considerably more than the cost of educating a child in regular education, the increased special education enrollment has been a significant contributing factor to the financial problems of the school system. These costs were not only growing in instructional programs for children with handicapping conditions, but also in noninstructional services such as student transportation. Thus, in 1980, while only 6% of the total pupil population was receiving special education services, 14% of the total school budget was given over to special education. While the average per pupil costs in regular education were $2716 (elementary), $3236 (middle), and $2716 (high school) at the respective grade levels, the average cost for a child in special education was $7958. [35]

In order to have a full appreciation of where the public schools stood financially by the 1980 fiscal year, it is first necessary to understand the impact of five years of retrenchment upon the City and its school system over the last half of the previous decade. The public schools were among the major victims of the fiscal crisis which struck New York in 1975. According to a report completed in 1976 by the Office of the Deputy Chancellor, the schools took a budget reduction of $262 million during the first year of the fiscal crisis. This resulted in the layoff of more than 10,000 teachers and an overall staff reduction of 12,000 personnel. The report further pointed out that while spending for education accounted for 21.6% of the total City budget during the three years prior to the fiscal crisis, the schools were being required to absorb 25.4% of the cutbacks that the City was taking in its general operating expenses in 1975. [36]

The significant cutbacks in the Board of Education budget and the resultant layoffs in staff motivated the United Federation of Teachers and other education lobby groups to initiate legislative action in Albany that was designed to protect the school system from a disproportionate share of the additional City cutbacks. Finally, after a difficult legislative battle and a veto by the Governor, the Stavisky-Goodman bill, named after its legislative sponsors, was written into law in 1976. The law requires that the City appropriate to the Board of Education at least the same share of the City budget as the average of what it received over the three years prior to the fiscal crisis. A year after its passage, the City challenged the constitutionality of the law in the courts and the law was upheld.

City officials continue to criticize the law because it doesn't take into consideration decreasing student enrollments which, they claim, should reduce the cost of education. School officials have also criticized the law for not insuring the protections it was meant to provide. They claim that the law does not have adequate safeguards against changes in the structure of the City budget. For example, in 1978, State and federal medicaid reimbursements were taken out of City budget and payments were made directly to the hospitals. The City ceased accounting for these funds in its revenue and expense budget. This change in the accounting structure reduced the city budget by $307 million in 1979 and $319 million in 1980.[37] It therefore reduces the base upon which compliance with the Stavisky-Goodman law is measured. In 1980, debt service and pension costs were removed from the education budget and made part of the City's overall operating budget. This pullout, which came to

$626 million [38], is included by the State comptroller in the education budget when monitoring for compliance with Stavisky-Goodman.

Despite the shortcomings of the protections that were built into the state legislation on behalf of the Board of Education, the school system was able to rehire some of the 10,000 personnel who were laid off after the initial shock of the fiscal crisis in 1975. However, whether the school system was able to maintain its fair share of the local City budget is a more complex question. An analysis of the data on retrenchment in New York City between 1975 and 1980 demonstrates very clearly that among the many municipal services (more than 30 in all) which the local government provides, there were no winners. There were just losers. Thus, the only issues surrounding this painful period in the City's history concern who lost the most and whether these losses were distributed equitably.

One of the most comprehensive comparative analyses of budget retrenchment and service cutbacks among local agencies in New York was that performed by Raymond Horton and Mary McCormick in the 1981 edition of the annual publication Setting Municipal Priorities. [39] Their analysis is primarily concerned with five major City services: education, transportation, police, fire, and sanitation. It covers two distinct historical periods, 1970 to 1975, and 1976 to 1980. Beginning with an overview of City finances, Horton and McCormick show that while the actual budget of the City increased by 86% during the first period, it increased by only 10% during the second. While City operating expenditures increased 10% to 18% annually between 1970 and 1975, the largest single-year increase between 1976 and 1980 was 4%. In 1980, the spending level actually fell. When the authors adjust their figures to control for the rate of inflation, using a 40% modifier based on the local consumer price index, the data shows a different pattern. When adjusted for inflation, the rate of expenditure between 1970 and 1975 only increased 33%. During the second half of the decade, the real expenditures of the City actually declined by 23%. This adjusted budget data is reflected somewhat in the patterns on employment. During the first half of the decade, the citywide full-time workforce grew by 5%, while during the second half, it was reduced by 21%. Thus, when taken together, the patterns on real expenditures and employment indicate, as might be expected, a general increase in city services during the early period of economic growth, and a decrease during the latter period of retrenchment.[40]

ILLUSTRATION II-3

Constant Dollar Expenditures and Employment for the City of New York and Selected Functions, Fiscal Years 1970, 1975, 1980 (in millions of 1967 dollars)

Function	Fiscal Year 1970	Fiscal Year 1975	Fiscal Year 1980	Percent Change 1970–1975	Percent Change 1975–1980	Percent Change 1970–1980
Total City expenditures[a]	5,927.5	7,854.0	6,174.8	32.5	(21.4)	4.2
Police	518.1	614.1	391.9	18.5	(36.2)	(24.4)
Fire	235.9	263.7	172.9	11.8	(34.4)	(26.7)
Sanitation	148.5	169.2	118.3	13.9	(30.1)	(20.3)
Education	1,055.8	1,359.5	1,012.6	28.8	(25.5)	(4.1)
Transit	442.5	557.3	456.3	25.9	(18.1)	3.1
Total City employment[b]	241,827	253,677	194,308	4.9	(23.4)	(19.6)
Police	36,749	35,447	27,805	(3.5)	(21.6)	(24.3)
Fire	14,853	13,885	12,405	(6.5)	(10.7)	(16.5)
Sanitation	14,180	14,256	11,451	.5	(19.7)	(19.2)
Education	82,810	81,970	70,854	(1.0)	(13.6)	(14.4)
Transit	34,879	37,897	34,493	8.7	(9.0)	(1.1)

[a] Total City expenditures include only City payments to the Transit Authority.

[b] Total City employment excludes Transit Authority employment.

Source: Expenditure data for police, fire, sanitation, and education from City of New York, *Expense Budget*, as modified, for fiscal years 1971 and 1976; *Expense Budget*, as adopted, fiscal year 1980; employment data for police, fire, sanitation, and education provided by City of New York, Office of Management and Budget; transit data from *Transit Fact Book*, 1970–1971 and 1975–1976 editions; 1980 transit data provided by Office of Financial Planning, Metropolitan Transportation Authority.

Source: Charles Brecher and Raymond Horton, eds., Setting Municipal Priorities, 1981 (Montclair, N.J.: Allanheld, Osmun, 1980), p. 90.

When Horton and McCormick go on to do their comparative analysis of five major City services, their data suggest that education enjoyed the most rapid increase in expenditures between 1970 and 1975, and the second smallest decrease in the budget between 1976 and 1980. (See Illustration II-3.) The comparative data on employment, however, suggests education to be holding more of a middle ground. Education was one of three services to show a decrease in its personnel during the first period; it ranked third among the five in personnel cuts during the second period.[41] When one reviews the data as it is presented by Horton and McCormick, it is difficult to make an argument that education suffered from a disproportionate amount of budget and staff reductions or that education was treated as a disfavored service by the City. However, there are several limitations in the data as it is presented by these authors, and those limitations must be considered if one is to get a complete picture of how New York City dealt with retrenchment and what it meant to the school system.

To begin with, Horton and McCormick's comparative analysis of expenditures is based entirely upon data from the expense budget. Under ordinary circumstances that would be an adequate way of studying changes in the operational capacities of various local agencies. Nevertheless, New York City does not provide us with an ordinary situation when it comes to financial practices. Until very recently, it was a common practice in New York City to fund daily operating expenses out of the capital budget. However unsound this method may have been from an accounting perspective, it makes it imperative to look at changes in the capital budget when one is trying to assess fluctuations in operating expenses.

A second limitation of the Horton-McCormick data, is that it looks at the overall expense budget of the City without distinguishing between locally generated revenues and funds derived from external sources. While that method of analysis was appropriate for the purposes of their own study, it does not allow one examining the issue of retrenchment in terms of education to assess the important connection between State funding and local funding. To explain the point in another way, it can be said that the data we have examined thus far does not allow us to recognize or understand the practice which has been previously referred to as supplantation.

In July of 1980, the Chancellor's Office of the New York City Board of Education completed a longitudinal analysis of the relationship between state funding and city funding over a six-year period between 1975 and 1980.[42] The staff report examined both the expense budget and the capital budget. It controlled for inflation in order to calculate constant dollar trends over the period where and when it was relevant to the analysis. As is indicated in Illustration II-4, the report showed a 3.8% actual dollar increase in the education expense budget and a 16% per pupil expenditure increase. However, when these figures were adjusted for inflation using a 37% modifier, it showed a constant dollar decrease in the expense budget of 25%, and it showed a constant dollar decrease in per pupil spending by 16%.

ILLUSTRATION II-4

TRENDS IN THE SIZE OF THE SCHOOL'S BUDGET 1975-80

	(Millions)	(Dollars)	(Millions)	(Dollars)
Fiscal Year	Expense Budget	Expense Budget Per Pupil	Expense Budget in Constant[2] (1975 Dollars)	Expense Budget in Constant (1975) Dollars Per Pupil
1975	$2,866.28	$2,605	$2,866.28	$2,605
1976	2,766.28	2,517	2,595.05	2,361
1977	2,805.18	2,604	2,573.56	2,389
1978	2,984.57	2,880	2,566.27	2,476
1979	2,892.75	2,896	2,274.17	2,277
1980[1]	2,976.03	3,028	2,139.49	2,177
	+ 3.8%	+ 16%	- 25%	- 16%

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1. Includes pensions and debt service.
2. Adjusted by the application of a Fiscal Year CPI.

NOTE: All amounts are end of year budgeted amounts with the exception of 1980, which is the budget as modified through February 15th.

Source: "Report to the Chancellor on the Effect of State Funding on City Funding of the Board of Education." Chancellor's Office of Policy Analysis, Research and Planning, New York City Public Schools, July, 1980.

When one analyses the sources of the school budget over the six-year period between 1975 and 1980, a distinct pattern is evident. As state aid to education increased, local support declined. (See Illustration II-5.) While the overall dollar increase in the budget was $109.75 million, the dollar increase in state aid was $142.4 million. Thus, the state portion of the entire budget grew from 29.9% to 33.6%. While the City tax levy contribution to the school budget increased by $94.57 million, the

Source of Funds
Board of Education Budget 1975-80

FY	Federal Aid	(Pct)	State Aid	(Pct)	Tax Levy	(Pct)	Capital	(Pct)	Other Intra-City	(Pct)	Total
Final 1975	356.25	(12.4)	858.00	(29.9)	1366.97	(47.7)	214.80	(7.5)	70.26	(2.5)	2866.28
Final 1976	291.56	(10.5)	812.05	(29.3)	1387.53	(50.2)	198.21	(7.2)	76.97	(2.8)	2766.32
Final 1977	286.17	(10.2)	828.98	(29.5)	1467.53	(52.3)	183.87	(6.6)	38.63	(1.4)	2805.18
Final 1978	351.84	(11.9)	853.92	(28.8)	1550.26	(52.3)	185.99	(6.3)	22.58	(0.7)	2984.57
Final 1979	300.16	(10.4)	939.99	(32.5)	1418.85	(49.0)	183.20	(6.3)	50.55	(1.8)	2892.75
Mod 1980	345.13	(11.6)	1000.40	(33.6)	1461.54	(49.1)	137.34	(4.6)	31.62	(1.1)	2976.03
CHANGE 1975-80	- 11.12M (+ 3.1%)		+ 142.4 (+ 16.6%)		+ 94.57 (+ 6.9%)		- 77.46 (- 36%)		- 38.64 (- 54%)		+ 109.75 (+ 3.8%)

ILLUSTRATION II-5

All amounts are from end-of-year condition except FY 1980 which includes modifications through February 15.

Source: "Report to the Chancellor on the Effect of State Funding on City Funding of the Board of Education," op. cit.

City capital contribution decreased by $77.46 million and its intra-city fund contribution decreased by $38.64 million. Thus, the net decrease in City funding over the six-year period was $21.43 million. The overall City contribution to the budget decreased from 57.7% to 54.8%.

ILLUSTRATION II-6

BOARD OF EDUCATION SHARE OF LOCAL REVENUES

	NYC Tax Levy Revenues	NYC Capitalized Expenditures	Total	NYC Funding (Tax Levy, Capital & Intra-City) of BOE	%
1975	6674.2	797	7471.2	1652.03	22.1%
1976	7372.5	861	8233.5	1662.71	20.2
1977	8017.4	?	NA	1690.03	NA
1978	8432	577	9009	1758.83	19.5
1979	8553	445	8998	1652.6	18.4
1980	8976	282	9258	1630.5	17.6
hange 1975-80	+ 2301.8 (34%)	- 515 (-65%)	+1786.8 (+24%)	-22.5 (-1.3%)	

Source: "Report to the Chancellor on the Effect of State Funding on City Funding of the Board of Education," op. cit.

One cannot fully understand the extent of local disinvestment in education unless local support of the schools is seen in light of the City's own self-generated revenue base -- that part of the City budget which is funded entirely by local sources, as opposed to intergovernmental aid from the State or federal levels. As the data in Illustration II-6 indicate, the local contribution to the school budget was decreasing during a time when the local revenue base of the

City was growing at a rather significant level (34%). The net result of these trends was a substantial reduction of locally generated revenues that was given over to the schools. Thus, between 1975 and 1980, the Board of Education's share of locally generated revenues decreased from 22.1% to 17.6%.

The data describing local disinvestment in education in the face of increased state aid provides us with rather straightforward documentation regarding the practice of local supplantation of state educational funds. However, one does not need to analyse the data in order to discover what is going on as a result of this rather intricate and convoluted scheme of intergovernmental finance. By midpoint in the last decade, when the City was going through the painful motions required to cope with its own fiscal insolvency, the practice of supplanting State education funds became widespread, blatant, and matter-of-fact. As Deputy Mayor for Policy, Robert F. Wagner Jr. explained:

> I might as well tell you, Fink and Anderson (state legislative leaders) tell us that aid to education is really part of an aid program to the City. In their eyes, it is not just education money. They tell us that it is easier to get money that is earmarked for education than general aid to the City. They may tell Frank (Macchiarola) something else, but this is what they tell us.[43]

The practice of supplantation bears testimony to a number of institutional inequities with regard to State and local finances, all of which are felt by the local school system. To begin with, because the legislature in Albany has historically manifested a rather strong anti-urban bias, particularly with regard to New York City, local municipal officials in the City have attempted to put their own fiscal house in order by latching on to funds that have been made available through the state education aid package. The legislature in the State capitol has been known to be sympathetic and generous when it comes to general education aid. However, as the data and the litigation described in the previous section tell us, that sympathy and generosity has not been carried through in an equitable fashion. Urban school districts like New York and other property-poor districts have been discriminated against in the distribution of State education funds. The legislature has appropriated some marginal additional aid to the State education budget in response to the charges of inequity and the decisions of the courts. However, what minor victories have been won in the judiciary on behalf of school finance reform are often lost at City Hall through the practice of supplantation.

In the end, the manner in which the municipal government has chosen to deal with the biases of of the legislature and its own fiscal problems have had a punitive impact upon the schools. The system of intergovernmental finance which we are observing, and the political dynamics that it creates, place the municipal budget process center stage in determining the level of support which the schools will enjoy in any given year. Those individuals who participate in the budget development process enjoy a great deal of authority or influence in determining what goes on in education. They are important actors because they not only determine the share of locally generated revenue which will be devoted to education, but because they also have a say in deciding what share of the State education budget will find its way to the schools.

THE PROCESS AND THE PLAYERS

Budget development within the New York City school system is a full-year process. It begins in the late summer of each year when the executive directors of the various central divisions of the N.Y.C. public schools submit their budget requests to the Chancellor. By mid-December, the Chancellor prepares the budget message for the Board of Education. The Board of Education puts the Chancellor's budget under the scrutiny of its own budget review committee, holds public hearings on the merits of the document and then sends it to the Mayor. As has historically been the case in many large school districts around the country, [44] the Board of Education does not usually make many changes in the budget that is prepared by the Chancellor.

Prior to the fiscal crisis which emerged in 1975, the usual practice within the City was for the Mayor to review agency requests, including that of the Board of Education, from January through April. Then, in mid-April, he would submit his budget to the Board of Estimate and City Council. Between April 21st and May 16th, the Board of Estimate and the City Council held public hearings on the Mayor's preliminary budget. On May 1st, the Mayor submitted his final executive budget to the same bodies for consideration and approval. These steps have remained in the budget development process, but another crucial step has been added since the fiscal crisis. On September 9th, 1975, the New York State legislature created an Emergency Financial Control Board which was charged with the responsibility to oversee, approve, and modify a financial plan prepared by the City which was designed to achieve a truly balanced budget.

As part of the monitoring process subsequently established, the Mayor submits to the Control Board an annual financial plan outlining his budget goals for the forthcoming fiscal year and the progress which has been made in achieving the long-term financial goals of the City.

Usually, the mayor will publish his financial plan toward the end of January, not long after the schools Chancellor has made public what will be his own budget request from the City. The difference between the articulated budget needs of the schools Chancellor and the planned expenditure level of the Mayor often sets the stage for a two-phase budget battle which takes place in various arenas at City Hall. One phase involves a set of negotiations which are conducted between school officials and municipal officals (usually from the Office of Management and Budget) prior to the formal announcement of the Mayor's executive budget in the spring. A second and more heated phase occurs when school officials and members of various education interest groups lobby the local legislative bodies (Board of Estimate and City Council) to make their viewpoints known on the budget before it receives final approval.

The Mayor does have authority to veto a budget agreed upon by the Board of Estimate and the City Council, However, this veto may be overturned by a two-thirds majority vote of either body. While the Mayor is a member of the Board of Estimate, he does not vote on the budget. Since the governor and the State legislature are required by law to decide upon a State budget by April 15th, local officials in New York usually have the advantage of knowing the amount of state aid that will be made available to them prior to the approval of the City budget. According to the City charter, the City budget must be agreed upon by

June 10th for the fiscal year that begins on July 1st.

As the foregoing description of the process suggests, the major governmental actors in the development of the school budget are the Mayor and the members of the Board of Estimate and of the City Council, each of which assumes a rather distinct role. Subsumed within the mayor's role are a whole host of actors who participate in the process on his behalf. Key among those individuals in the Koch administration is Deputy Mayor for Policy, Robert F. Wagner Jr., who acts as the Mayor's chief representative to the school system. Wagner assumed that role in 1979 when Mayor Edward Koch asked him to serve as a liason between the Office of Management and Budget (OMB) and budget officials for the Board of Education, whose relationship had hit such a low point at that time that it was hardly workable. Since his arrival on the scene, Wagner has become a key player in both budgetary and policy roles regarding education. As he explains it, "My role is to act as a liason, an ambassador if you wish, between the Board of Education and OMB. I have also gotten involved as a monitor of the Board of Education in terms of fiscal controls. My short-term concern was with overspending. I have more recently gotten involved in policy issues."[45]

The other major actor on behalf of the mayor is the staff in the Office of Management and Budget. OMB represents a group of financial technicians whose job it is to translate the Mayor's priorities into a budget document. Because it is close to the Mayor, OMB enjoys a great deal of authority. Because it controls the budget, it can influence policy, monitor performance, and hold agency people accountable for what they do. Because it possesses more information than anyone else on both the fiscal health of the City as a whole, and the financial needs of individual agencies, it makes an enormous contribution to the annual dialogue that results in the formulation of a budget. As the former Assistant Director of the Office admits, "OMB has an inordinate amount of authority. We know the Mayor's priorities. It's our job to put them into policy." [46]

While the Mayor and OMB look towards the budget with an eye towards economy, members of the Board of Estimate and City Council are more inclined to spend money. This is particularly true of those members who have less than citywide constituency (i.e., the borough presidents and council members). Unlike the Comptroller and the Council President, who are elected citywide, the borough presidents and the Council members are more susceptible to neighborhood or community pressure for expanded services and increased spending. As one high-level OMB official explained it, "The Council and the Board of Estimate are more inclined to spend. They are concerned with providing services to their constituency. The Mayor, on the other hand, must give priority to balancing the budget." [47]

The major figure from the school system in the budget development process is the Chancellor. He is the chief executive officer of the school system; he is the chief liason with the Mayor, and he is held accountable for what is spent. On occasion, the Chancellor shares this role with the President of the Board of Education, to whom he formally reports. That was particularly the case with Board of Education President Stephen Aiello, whose candidacy for a position with the Carter White House during the first year of the Macchiarola administration made him a major figure on the local political scene. Aiello eventually left the Board of Education to go to Washington upon his appointment as Special Assistant to the President.

There are several key administrative officials at the central school headquarters who act on behalf of the Chancellor in the budget development process. Ever since the reorganization of the central administration in March of 1973, the key person in that role has been the Deputy Chancellor.[48] This pattern continued right through the first year of the Macchiarola administration. Then, with the appointment of Dall Forsythe as budget director for the school system in August of 1969, the role became increasingly a shared one. Forsythe played a major part in healing relations between the Board of Education and the Office of Management and Budget after a year of conflict and controversy. Having previously served as chief budget analyst for the President of the City Council and having once worked with Macciarola in the capacity as a consultant to the State Emergency Financial Control Board, Forsythe knew both the issues and the people relevant to the budget process. His healing effect cast him as the major representative of the Chancellor in dealing with budget officials at City Hall.

There are numerous other individuals within the school system who get involved in the budget negotiations that take place with the municipal government. They include members of the Board of Education, members of community school boards, local community superintendents, principals, and the leaders of professional education groups. However, the activities of these players are usually carried out toward the end of the process when the Board of Estimate and City Council are going through their final considerations of the Mayor's executive budget. At that point, once the Chancellor has set the tone of a negotiating strategy, and when the lobbying of local council members and the borough presidents can promise some results, these individuals enter the process. As one community superintendent explained it, "The Chancellor matters the most in determining the budget. He builds the ball park that I have to play in...My only involvement in the budget comes after the Mayor's budget comes out. After that there is always room for negotiation. I then go to the Council members and the Borough President. They are easier to get at. Their constituency is smaller. They are a bit more responsive." [49]

There once was a time in New York City when the array of interest groups that would step forward on behalf of education was both numerous and powerful. Now they are not so numerous and, some would argue, those that remain are not so powerful as they once were. As Deputy Mayor Robert F. Wagner, son of the former New York City Mayor, explained, "The constituency is strong, but not so strong as it once was when my father was Mayor. The older interest groups such as UPA (United Parents Associations), and PEA (Public Education Association), are not so powerful as they used to be. Much of this is the result of changing demographics. There are few middle class people left. The UFT (United Federation of Teachers) is now the principal source of strength. The EPP (Educational Priorities Panel) is fairly strong. It more represents a resurrection of the kind of movement that existed in the past. They have given what they say credibility, but they don't really have the power that used to be." [50]

The Educational Priorities Panel was founded in 1976. [51] Its evolution began in heat of the City's fiscal crisis when representatives from four groups - the United Parents Associations, the Public Education Association, the Community Service Society, and the Citizen's Committee on Children - sought to establish a dialogue with school officials over the future of the education budget. The group, alarmed by the severe budget cuts imposed upon the schools, sought information about and participation in the Board of Education's deliberations concerning how its budget cuts would be absorbed. When these efforts proved to be futile, the group decided to form a broader alliance of interests around the City and to seek foundation assistance to develop its own analytical capacity. Today, the Educational Priorities Panel is an alliance of twenty-five interest groups. Its membership includes five major types of organizations: parent groups, child advocate groups, voluntary social agencies, civic groups, and ethnic-racial organizations. [52] While the association has been a major advocate for education in the City, it has also been a major critic of the way the Board of Education spends its money. In this way, EPP has carved a unique role for itself in the budget process. As its Executive Director Stanley Litow explains it, "The role of EPP is to serve as an independent source of data on management and budget issues to the organizations, the media, the public. We consider ourselves an advocate for education and the parents. We also monitor the Board of Education." [53] Since its inception, the EPP has performed management and budget audits of a wide range of activities at the school headquarters, including school building utilization, custodial services, the lunch program, school closings, special education, and pupil transportation. It prepares formal testimony on the budget for the City Council and Board of Estimate every year. It frequently confers with staff in the Office of Management and Budget on both management and policy issues. Because it has been critical of the Board of Education and school spending practices, the Educational Priorities Panel enjoys considerable credibility and influence with municipal officials concerning the budget.

The other organization which has carved out a major role in the budget process is the United Federation of Teachers. The manner and style of the union, led by Albert Shanker, is quite different from that of the EPP. While EPP's power in the budget process is a function of its ability to persuade, the union's ability to persuade is a function of its power. Shanker has been a major figure on the New York political scene for more than a decade. His teachers' jobs have been on the line, and many have been lost, each time the City goes about the business of cutting back on its spending. Thus, the union and its membership have a direct stake in the budget process and its outcome. The successful passage of the Stavisky-Goodman bill in 1976 was a clear manifestation of the union's interest and its power with regard to the budget. That exercise of strength in Albany also demonstrated that,

because of its close association with the state teachers' union (New York State United Teachers), the UFT approaches the budget from both a local and State perspective. That broader perspective of the union has sometimes worked against the interest of the City schools. The union, for example, has taken a lukewarm position on the issue of school finance reform, particularly with regard to proposals that would redistribute funds away from some districts and threaten the job security of teachers within them.

The power of the union and other influencial interest groups notwithstanding, most observers of the school scene in New York City would agree that the constituency for public education has certainly dwindled. Its clientele has become smaller in size, poorer in class, and less politically viable. The election of Edward Koch as Mayor in 1977 led many to believe that the schools were headed for further setbacks in terms of support. Koch had been elected with only meager support from the black and Puerto Rican communities. And it was their children who were attending the public schools. Koch's election campaign had been antagonistic to organized labor. And the union represented the most significant interest group on behalf of education in the City. Yet Koch was promising to upgrade the school system.

The selection of Frank Macchiarola as Chancellor of Schools in 1978 provided for more curiosity. He had been chosen with the strong and outspoken support of the Mayor. In fact, many individuals from both outside the school system and within referred to him as "Koch's Chancellor." As a former Deputy Director of the State Emergency Financial Control Board, Macchiarola came to the schools with a reputation as a fiscal conservative. In fact, his relationship with Albert Shanker was probably worse than that which the union president shared with the Mayor.

As Macchiarola began his tenure as Chancellor, the schools were in difficult straits. They had suffered from local retrenchment and were victimized by an unfair State school finance formula. In due time, they would be promised further cutbacks at the federal level. A change on behalf of the clientele of the schools would in some measure require a kind of advocacy which would win back some of the resources that had been lost or denied on the political battlefield. The selection of "Koch's Chancellor" gave rise to two streams of speculation. One scenario saw the Chancellor as part of a scheme on the part of the Mayor to further dismantle the school system financially, therefore leading to a reinvestment of local resources into other services. Another scenario would generate hope that the Mayor would readily pour additional funds into the school budget in order to facilitate the recovery that he and the Chancellor had been promising. As things turned out, neither proved to be true.

ENTER "KOCH'S CHANCELLOR": THE FY '79 BUDGET

The new Chancellor's participation in the budget process did not await his official inauguration. Frank Macchiarola had set up a transition team at the Livingston Street headquarters of the school system more than two months prior to his official swearing in on July 1st. During that time, the transition team began to define the philosophical and programmatic priorities which would shape his administration. It also began to reveal an approach to budgeting that was indicative of a distinct personal style.

As the City Council was working on the final details of the fiscal year 1979 budget request submitted by then Chancellor Irving Anker, Macchiarola made an eleventh-hour appearance before the Council's Finance Committee in order to request a change. The Chancellor-designate proposed a plan that called for the removal of $15 million from the Board of Education's administrative budget and the reallocation of these funds into the budget for instruction. Within the next month the Chancellor's staff would find additional money in its own budget that would be added to the transfer. The funds would be utilized to initiate three new programs at the school level:

1. The sum of $9 million would be used to hire 657 teachers in order to reduce class sizes in the first grade from an average of 32 pupils to an average of 25. This program was in line with the emphasis on early childhood development which would be declared a key priority of the administration.

2. Another $5.4 million would be committed to a transitional class program for children who had been held over in the first three grades. In addition to fitting in with the administration's emphasis on early childhood development, this program served as a forerunner to the remedial aspect of the promotional policy that would be the hallmark of the Administration's instructional agenda. Under the transitional class program, children who had been held over would be placed in specially designed, nongraded, reduced-size classes for a period of six months to a year, depending upon need. During the 1978-79 school year, there would be 489 such classes serving approximately 8000 students in 358 schools.

3. Finally, $4 million would be devoted to after-school programs for children. This made 350 elementary and intermediate school buildings available for community-based activities. The proposal had a particular appeal to the Council members whose neighborhood constituents stood to enjoy a direct and tangible benefit.

The Chancellor's proposal to the Council, which was heartily approved, was one of those oft-sought-after legislative packages that had in it "something for everyone." Critics of the Board of Education's spending practices and its large bureaucracy were pleased to see the transfer of funds from the administrative to the instructional budget. Among the most vociferous of those critics had been the Mayor himself. The members of the Council were pleased because the after school programs gave them something to take home to their constituents. Albert Shanker, who had been a major opponent of the Chancellor's appointment, greeted the proposal with praise because it would mean more jobs for teachers. This marked the beginning of an on-again, off-again relationship between the Chancellor and the UFT president, which allowed them to cooperate at times when it was perceived to be in their mutual interest. Finally, after some initial skepticism and suspicion, the new budget package received the support of the local community school boards and their superintendents whose district schools were the direct beneficiaries of the programs initiated.

In addition to signaling what the overall instructional strategy of the new administration would be, the eleventh-hour proposal made to the Council was significant on several other levels. To begin with, it represented an approach to budgeting that was program-oriented. The new administration was not just asking for more money. It was saying what it was going to do with the money, why it was important , and who would benefit. Given the ingredients of the legislative package that he put together, the new Chancellor was also beginning to set in place the foundation of an important political alliance composed of a local district constituency and the union which could and would be called upon at budget time when the Board of Education was attempting to get its "fair share" of the resources allocated by the municipal government. In so doing, Macchiarola was also working to defuse two potential sources of opposition to the administration's initiatives which were not particularly receptive to a new Chancellor who was seen as an outsider to the school system. Finally, and perhaps most importantly, the Chancellor's first turn at the budget trough demonstrated a willingness on his part to go directly to the Council to satisfy his budgetary needs rather than through the Mayor, who had been at least partially responsible for his appointment. That agressiveness on the part of the new school chief was a revealing sign of things to come.

THE BATTLES BEGIN: THE FY '80 BUDGET

Almost immediately after the Chancellor retrieved the rewards of the minor budget victory he enjoyed during the summer of 1978, the directors of the various central divisions of the Livingston Street school headquarters began to prepare their initial budget packages for the 1980 fiscal year that would begin in July of 1979. These requests were submitted to Deputy Chancellor Richard Halverson, who at that point in time had major responsibility for the school system budget. The new administration had originally retained the incumbent budget director who was appointed by Irving Anker to operate and maintain the technical aspects of the budget office. However, it was Halverson who would supervise the internal budget process on a policy level, and it was Halverson who would serve as the Board of Education's chief liason with the Office of Management and Budget.

After several months of internal negotiation and revision, the Chancellor finally had his first budget message to submit to the Board of

Education. On December 15th, 1978, Macchiarola made public a $3.03 billion proposal. The request was slightly lower than the one which had been prepared by Irving Anker a year before. The total amount was based upon the expectation of $130 million in state and federal aid and $41.6 million in savings through attrition and the reduction in the pupil register. [54] With the money that was being asked for, the Chancellor was proposing to spend $84.2 million for new programs or the expansion of existing programs and $127.9 million for increased costs over which the school system exercised no control. Among the latter fixed costs were social security payments, pensions, and other personnel items. Among the new expenditures being proposed was $33.8 million to extend the transitional class program, $27.5 million for the hiring of 110 attendance officers to curtail truancy, $32.9 million for the expansion of special education services, and $32.9 million for the maintenance and repair of school buildings.[55]

Two days after the New Year, and less than three weeks after the Chancellor submitted his budget message to the Board of Education, Mayor Edward Koch began to reveal preliminary figures on his own financial plan that would soon be submitted to the New York State Financial Control Board. The Mayor's preliminary citywide spending proposal called for a general saving of $147.7 million and the elimination of 7073 full-time and 334 part-time city jobs. Of this total, $85.4 million in the spending reductions and 4981 of the job cuts were to come from the Board of Education. The Mayor's proposal, which had been prepared by the Office of Management and Budget, recommended in very specific terms the closing of 15 schools, the elimination of reduced class sizes in the first grade, and the halting of the new transitional class program. [56] Board of Education President

Stephen Aiello, enraged as much by the programmatic nature of the proposed cuts as by their amounts, issued a public condemnation claiming that the Board of Education has "an obligation and responsibility to set its own budget priorities." [57]

On the next day, the Mayor announced that he was rejecting a contract that had just been negotiated between the Chancellor and UFT president Albert Shanker. He ordered the Chancellor to renegotiate the agreement because it was "too expensive" in its present form. He publicly stated, "To approve the contract would violate the standards I have established for settling economic issues with the municipal unions." [58] The contract that had been negotiated would have given a 4% wage increase to teachers. It would have also put 10,000 paraprofessionals who were hourly workers on an annual salary scale, thus making them elegible for fringe benefits and pensions. It was the latter part of the agreement that had most troubled the Mayor.

Thus began a rather tortuous relationship between the new school Administration and City Hall. Added to the issue of money, where the two sets of players obviously stood far apart, was the more institutional issue of control. Legally, the Board of Education is an independent state-chartered agency which, within the guidelines set by the State Commissioner, has sole responsibility for establishing educational policy. However, the City school district is also fiscally dependent, and that arrangement sometimes forces school officials to compromise their autonomy when they solicit funds from the municipal government. School officials have come to realize that it is easier to extract money from the local budget when they can be specific about "what they want to do with it, why it is important, and who will benefit." However, jealous of their own autonomy, they don't like to be told these things. More than that, they do not like to be told where to take cuts. The issue of control had become a particularly sensitive one between the Mayor and the members of the Board of Education since Koch had publicly advocated mayoral control of the school system during the course of his election campaign. After all, at that point in time it did appear as though Koch had already managed to install his own Chancellor.

On January 15th, Mayor Edward Koch formally submitted the full proposal for his "Program to Eliminate the Gap" (PEG) to the Financial Control Board. It called for $250 million in spending cuts that would be implemented on two levels. Level I cuts, which would be implemented over the next fiscal year, would result in the loss of 6033 job cuts citywide. Level II cuts, which would be implemented as part of a contingency plan if the City was unable to realize anticipated revenues that it had hoped to receive, called for the elimination of 2842 additional positions. The Board of Education was scheduled to absorb 3,597 of the Level I reductions and 829 of the Level II. While the total of these cuts was less than those which had been announced by the Mayor earlier in the month, the impact on the schools would still be severe.

On February 15th, the Chancellor appeared before the Board of Estimate to make a prepared statement on the Mayor's proposed Program to Eliminate the Gap. His tone was moderate but direct. He said that he was not pleased with the proposed reductions, but praised the Mayor for releasing the PEG document early enough for there to be reasonable discussion. He then stated the facts. The Board of Education was being asked to absorb 59% of the Level I cuts ($83.3 million out of $140.7 million). This was a reduction of 6% of the school system's tax levy budget. Other agencies were being asked to reduce theirs by 2% or 3%. The Board of Education was also being asked to absorb 30% of the Level II cuts ($16 million out of $52 million). On top of these cutbacks, the Board of Education was being asked to absorb $29.6 million in increased special education services that had been mandated by federal law. After reporting on education's share of the retrenchment measures, the Chancellor then outlined the programmatic impact they would have within the school system. He mentioned, among other things, the elimination of reduced class sizes in the first grade and the termination of transitional classes. He closed his remarks with a request that $70 million in increased state education aid promised by the Governor would not be used to balance the City budget. [60]

Within the next few weeks, the Chancellor would take his appeal to the New York City Council. There, in the course of regular departmental hearings, Macchiarola defended his original December 15th budget proposal. He once again explained how the Mayor's PEG cuts imposed an unfair burden on education. He detailed the kinds of management improvements that his administration had made at Livingston Street. Then the Chancellor noted that the three exemplary programs which that same Council had endorsed at the beginning of his tenure were in danger of expiring. [61] In the meantime, the leadership of the City Council began to speak out against the Mayor's proposals. Soon a group of twenty-five Council members would form a coalition which promised to restore $33 million of the $83 million cuts that the Mayor had sought to implement.

As the battle lines were being drawn at City Hall concerning the adoption of the 1980 budget, a similar course of events were beginning to develop in Albany. Justice J. Kingsley Smith had issued his Levittown judgment on December 22nd. In January, Governor Hugh Carey had proposed a state budget including a school finance plan that would have moved towards greater equity in the distribution of resources around the state. His plan would have increased operating aid to the poorer districts by $203 million, and at the same time would have reduced the amount of funds made available to those districts in the wealthiest quarter. New York City stood to gain $11 million from the plan. On February 7th, schools Chancellor Macchiarola appeared before a joint meeting of the New York State Senate Finance and Assembly Ways and Means Committees to support the Governor's package. He appealed for a speedy solution to the Levittown issue and noted particular concern with those aspects of the decision regarding "municipal overburden." He then warned that $60 million of the $70 million in increased education aid proposed for New York City would be used to help balance the City budget and urged: "A way must be found to insure that schools receive these increases. We must insist that education aid goes to education." [62] When asked by a reporter after his testimony if the Governor's proposal that he was supporting amounted to a plan to take away from rich districts to pay for the poor, Macchiarola responded, "If it's a choice between being on the side of Robin Hood, or on the side of the Sheriff of Nottingham, I'm on the side of Robin Hood." [63]

Unfortunately for the Chancellor and the City school district of New York, not everyone saw the issue the same way. The Carey proposal drew immediate criticism from Senate Majority Leader Warren M. Anderson, a Republican from Binghampton. On March 21st, legislative leaders in Albany decided to scrap the Governor's new aid formula. They agreed that no district would get less aid in the next year than they were getting in the present. As Democratic Assemblyman Arthur Kramer, Chairman of the Ways and Means Committe explained, "The Robin Hood concept is dead this year...There is a commitment on the part of the Assembly to see that there are no dollar losses for any school district in the state of New York. There will be no major changes in the formula." [64] On March 27th, Carey and the legislative leaders tentatively agreed to a school aid plan that would increase statewide support by $185 million, with the guarantee that no district receive less money than they had in the previous year. Later in the session, Assembly Speaker Stanley Fink, a Democrat from Brooklyn, proposed that an additional $35 million be given to the State's poorer districts.

The tentative agreement reached in Albany gave City budget negotiators more definite parameters within which to work, and a good idea of just how much state aid to expect. However, they were far from an agreement on how much local money could be committed to the expense budget that was under consideration. On April 28th, the Mayor unveiled his $12.8 billion Executive Budget. [65] The reductions slated for the Board of Education were not as large as those originally cited in the Mayor's January "PEG" proposal. In fact, according to the Mayor's April figures, the education budget was in for an increase of $67 million over the budget of the previous year. Not included in the Mayor's calculations, however, was $200 million in increased expenditures that would have to be funded out of the base budget for collective bargaining agreements and federally mandated programs. In order to meet these new costs, the school system would still be required to take $73 million in program cuts (with the rest coming in the form of increased state aid). This could be translated into a loss of 1800 teaching jobs and 400 administrative positions.

As the City Council Finance Committee started to hold its hearings on the Executive Budget, various proposals began to emerge from both the Council and members of the Board of Estimate. As the deliberations proceeded, the local legislature heard testimony for increased aid to education from the League of Women's Voters, the Women's City Club, and, of course, again from the Chancellor himself. At the end, Finance Committee Chairman Edward Sadowsky pledged that more money would be found for education, fire protection, and libraries. City Council President Carol Bellamy, a member of the Board of Estimate, publicly urged the Mayor to add $12.8 million to the education budget.

On the evening of June 3rd, a meeting was held at the Mayor's residence in Gracie Mansion. It was attended by Comptroller Harrison Goldin, City Council President Carol Bellamy, the five borough presidents, and the leadership of the City Council. The purpose of the meeting was to work out a final compromise on the budget, and education was one of the major points of contention. Several proposals were put on the table. The Council leadership proposed that $35 million should be added to the total City budget with $26 million going to education. The members of the Board of Estimate, led by Comptroller Harrison Goldin, proposed a total increase of $28.4 million with $15 million going to education. The Mayor who, as might be expected, took the most conservative stance in the negotiations, said that he would not agree to more than a $26 million addition to the entire budget. Koch was now the first mayor in the history of the City to push the Council and Board of Estimate beyond the Charter-mandated budget deadline. Finally, after twelve hours of bargaining, the impasse was broken. An agreement was made to add $27.5 million to the budget. Of this amount, $20 million would go to education. By that time, the Board of Education was also expecting between $7 million and $12 million in supplemental aid from the State.

On July 27th, Deputy Chancellor Richard Halverson made an announcement to the superintendents of the thirty-two school districts around the city. He told them that while they were about to start the school year in September with $1 to $2 million more each than they had in the previous year, that additional money and more would be needed to pay for salary increases for teachers. He told them that despite the increases, their districts would fall 2% below the level of funding needed to maintain the service levels of the last year.

On August 31st, Halverson sent a five-page memo to the Chancellor recommending the closing of sixteen school buildings over the next year. The report was based upon a reported enrollment decline of 150,000 students (19%) since the fall of 1975. Between 1975 and 1977, sixty school buildings had already been closed. The projected savings from the new closings were set at $1.2 million. They would result in the relocation of three thousand students.[66]

A TRIP TO THE WOODSHED: FY '80, PART II

Under ordinary circumstances, the battles over the 1980 budget would have ended in the spring of 1979. The school system would have received its cuts, it would have found some way to live with them, and it would have limped along until the next round of budget negotiations began with the

City. But 1979 was not a typical year. It was problem-ridden, unpredictable, and loaded with explosive conflict. By the time the budget was adopted by the City Council and Board of Estimate in June, the relationship between budget officials at the Board of Education and those at the Office of Management and Budget had degenerated into anger. School officials tried to protect their own perogatives with regard to educational policy from what they perceived to be attacks by the City. Individuals within the Office of Management and Budget were disturbed by what they saw as an unreasonable reluctance on the part of school officials to provide them with the kind of information and cooperation they needed to make intelligent judgments regarding the budgetary needs of the Board of Education. As one high-level official in OMB explained it, "Our conversations with them would always begin with the argument that the Board of Education is a state-chartered agency that is independent. Their attitude was that they didn't have to respond to our information requests. They made zero attempt to be cooperative." [67]

As things were quietly heating up with OMB, education officials were also getting involved in a more visible public conflict that had a direct impact upon the City's school children. The second semester of the school year opened in February, 1979 with a three-month strike by school bus drivers which created an ordeal for 132,000 students who were not within walking distance of their schools or public transportation, and which proved particularly troublesome for 32,000 handicapped children who depended on the service. The striking drivers were not City employees. They were employees of the Varsity Bus Company, a private firm which provided 65% of the school bus transportation for children in the City. They were striking because of a decision by the Chancellor to create a system of competitive bidding for transportation contracts. The Chancellor was disturbed by a nearly monopolized system of contracting which did not give smaller bus companies an opportunity to compete on the open market. Moreover, an analysis by the Office of the Deputy Chancellor estimated a cost savings of $44 million over the next three years if a more competitive system of bidding were adopted. The drivers, who were employees of the Varsity Bus Company, saw the newly proposed procedures as a threat to their job security. The strike launched by Local 1181 not only closed down service for the Varsity busses, but also, through vicarious means, succeeded in halting the operation of the forty-four smaller companies that had been serving the schools. While the strike which began on February 15th was finally ended on May 11th, that settlement on the labor front marked only the beginning of the problems that would emerge as a result of the new bus contracts.

On August 24th, Dall Forsythe, the newly appointed budget director at the Board of Education,. sent a memorandum to Deputy Chancellor Richard Halverson advising him that a collective bargaining agreement recently negotiated with the United Federation of Teachers would cost the school system $13.7 million in funds that had not been provided for in the 1980 budget. In addition to this, Forsythe estimated the future expenditure of $40 million for special education and transportation services that had not been anticipated. The special education costs were the result of increased enrollment brought about in response to a court-ordered federal mandate. The transportation costs resulted in part from the growth in special education and in part from the miscalculation of savings that would be realized as a result of the new bus contracts. These unanticipated expenditures would not only cause a serious deficit in the Board of Education's budget, but they would also threaten to throw out of balance the financial plan that the Mayor had submitted to the State Financial Control Board. To make matters worse, the financial management systems within the school system were in such poor condition, that nobody really knew what the size of the deficit would be. In the meantime, special education enrollments continued to grow, and so did expenditures.

During the month of September, a series of meetings were held between Board of Education and OMB representatives where they discussed both the size of the deficit and the manner in which it might be handled. On October 3rd, a meeting finally took place between the Mayor and the Chancellor. At that point, the size of the problem was estimated at $80 million, and Koch informed Macchiarola that it would have to be resolved by a combination of spending reductions and whatever state and federal aid the Chancellor could garner. The Mayor insisted that he would not make any City money available to resolve the deficit. He then ordered the Chancellor to prepare a plan by October 15th that would be suitable for submission to the Financial Control Board. This plan would include the following:

- A schedule of increased revenue expectations for FY '80
- An expenditure reduction plan
- A timetable for the implementation of expenditure reductions
- A contingency of reductions in the event that anticipated revenue increases were not realized

Within a week after the Koch meeting, Reuven Savitz, the Senior Assistant to the Chancellor for Business who had been appointed in June, sent a report to Macchiarola projecting the total cost of the bus contracts at $105.05 million more than had been predicted in the previous estimate. This put the total transportation deficit at $40 million. Upon disclosure of these findings, the Mayor made a public pronouncement that he would not bail out the Board of Education. He insisted that school officials would "eat their deficits." He pledged, "We will not lay off cops and firemen to make up for their deficits." [68]

On October 12th, the Chancellor sent a memorandum to the Office of Management and Budget which projected a total budget gap of $84 million and outlined a cost reduction and revenue plan designed to eliminate that gap. The Mayor's Office of Management and Budget agreed with Macchiarola's $84 million figure. But OMB disagreed with the Chancellor's revenue projections and found his cost reduction plan to be too vague. In the meantime, Comer Coppie, Executive Director of the Fianancial Control Board, sent a letter to the Mayor reminding him that the FCB was expecting a revised financial plan for the City within the next week. That plan would include cutbacks in the overall spending of the City so that its finances could be put in balance by 1982, as had been required by law. It would also describe a method for dealing with the expenditure problem at the Board of Education.

On October 30th, Mayor Edward Koch summoned Board of Education officials to his office at City Hall. There, once again, he warned the Chancellor and Board President Stephen Aiello that they could not expect any help from him in overcoming their deficit. The Mayor also used the occasion to inform them that he was assigning Deputy Mayor Robert Wagner Jr. to serve as his personal liason with the Board of Education. At that same meeting, the Chancellor proposed a plan to the Mayor that would result in $45 million worth of cuts. Included within the proposal was the elimination of free transportation for students living less than 1 1/2 miles from school and the layoff of up to 2300 teachers.

The Chancellor's recommendations set off a series of reactions around the City. Much of the criticism of the budget which emerged from that point onward was heaped upon the Chancellor himself. Five members of his own Board of Education objected to the Chancellor's plan and called upon him to cut back on his personal staff. Members of the Board of Estimate and City Council demanded that the Chancellor scrap his "horror list" and come up with a plan that focused on administrative cuts. Comptroller Harrison Goldin threatened to come up with his own suggestions to eliminate entire bureaus at the Livingston Street Headquarters. City Council President Carol Bellamy accused school officials of "living in a dream world" if they believed that they could lay off 2300 teachers without touching the central bureaucracy. In a radio interview on a local station, City Councilwoman Mary Pinkett charged that everyone at the Board of Education headquarters was more expendible than teachers. She went on to say, "Before the City allows larger classes, layoffs of teachers and paraprofessionals, or cuts in lunch programs and transportation for low income children, Chancellor Macchiarola would have to go first." [69]

By mid-November, the budget gap at the Board of Education was put at $92.1 million. At that point, the chorus of criticism that had been led by elected officials was joined by the editorial boards of the local press. On November 14th, both the New York Times and the New York Post ran editorials calling upon the Board of Education to take control of its spending and to implement the kinds of financial management systems that had obviously been lacking. They also noted how the Board of Education had proposed to resolve its deficit by cutting instructional services. In the meantime, the Board of Estimate and the City Council set a November 20th deadline, by which time school officials were expected to work out an acceptable plan to resolve their $92 million problem.

As budget analysts at Livingston Street went back to the drawing boards in order to come up with a new prescription for cuts to meet the November 20th deadline, a number of efforts were carried out to identify additional sources of revenue so as to reduce the gravity of the required cuts. Beseeched by representatives from the school system and with the help of the City Office of Management and Budget, State Comptroller Edward Reagan was able to come up with $11.3 million in state funds to which the Board of Education was entitled. Assisted by Deputy Mayor Robert Wagner, school officials launched a strong lobbying effort among members of the Board of Estimate and City Council on the afternoon of November 19th. Then, on that same evening, Board President Stephen Aiello, who was about to leave his position in New York to join the Carter administration in Washington, made a call to the White House that resulted in the speed up of $14 million in Impact Aid money earmarked for New York City.

On Tuesday, November 20th, Chancellor Frank Macchiarola appeared before the Education and Finance Committees of the City Council in order to outline his plan to close the $92.1 million budget gap. The proposal provided for an actual spending reduction of $23.6 million and $68.5 in revenue offsets. Of the $23.6 million in cuts, $5.7 would be realized through administrative cutbacks - requiring the layoff of 150 administrative personnel and the freezing of 490 administrative vacancies. In addition to the additional state and federal aid that the Board of Education was able to expedite, it was able to identify $35.6 million in firm revenues that did not appear in its original budget. It was also allocated $7.6 million in tax levy reserve funds from the City. The balancing plan did not involve the layoff of any teachers, nor did it include the reduction of free and reduced transportation services to children.[70] In exchange for the availability of City reserve funds, school officals verbally agreed to the establishment of a set of financial monitoring procedures by the City.

While the resolution of the deficit meant that the worst part of the budget crisis was over, the school administration was not yet out of the woods with regard to the credibility it had lost or the restitution that would still be demanded of it. On the evening of November 20th, the New York Post, armed with a report prepared by the Educational Priorities Panel, printed an editorial criticizing the Board of Education for taking only $23.6 million in cost reductions. On November 24th, the Daily News issued an editorial entitled "Good News, Bad News" which criticized the temporary solution to the fiscal headaches within the school system. It further chastised the Chancellor for "miraculously" discovering that there was fat in the administrative budget after having first denied it.[71]

Before the ink was dry on the November 20th agreement to close the deficit, another conflict began to emerge concerning the structure of the education budget. On the next day, Harrison Goldin in his capacities as City Comptroller and as a member of the State Financial Control Board, sent a letter to Chancellor and Board President Aiello demanding the implementation of tighter financial controls. He urged the development of "a control mechanism that will provide a basis internally for the Board to monitor and control its expenditures and that will assure compliance by the Board of Education with appropriation limits imposed by the City." Goldin's letter included a list of recommendations of the kinds of information and mechanisms he desired. It closed by requesting, "To the extent that your recent agreement with the Office of Management and Budget meets these standards, I request copies of the resulting reports." When first asked about having agreed to any outside financial controls, the Chancellor responded, "It serves everybody to have as much information as possible available, as long as the autonomy of the Board is maintained and their perogatives protected." [72]

Within a few days, the Educational Priorities Panel issued a report which was highly critical of the budget process at the Board of Education and the manner in which it had decided to take its cuts. It recommended a process which is "1) public, providing for informed discussion; and 2) based on accurate data and presentation of all the facts." The report went on to state "Lack of full public discussion tends to obscure the shaky foundations upon which budgets are being built, not only from the public, but possibly even from the budget builders themselves." The report then outlined nine specific pieces of information which the EPP wanted to have made public on a regular basis. [73]

The attack on the school budget finally reached the State level at a December 5th meeting of the Financial Control Board, It was there that Governor Hugh Carey and Mayor Edward Koch agreed that they would ask the Board of Education to give formal approval to the monitoring mechanisms that it had informally accepted during the previous month. That public statement inspired a New York Times editorial urging the Board of Education to "get its payroll data in better order" but warning the City not to intrude in matters of education judgment.[74]

On December 11th, Mayor Ed Koch and Comptroller Harrison Goldin sent a joint letter to Board President Stephen Aiello asking for the establishment of ten specific financial management procedures, "to monitor the progress of the Board's 1980 expenditure reduction program and prevent the development of any future deficit conditions." The requirements sought by the two City officials, however, involved more than just an information exchange. What they wanted was authority to veto the hiring of any new nonpedagogical or nonteaching employees. This marked the major point of difference between education officials and the City concerning monitoring. While school officials understood monitoring as the disclosure of information, those in the municipal government saw it in terms of actual control.

On December 20th, Board President Aiello responded to the Koch-Goldin request in writing on behalf of his colleagues at the Board of Education. He began by noting, "We wish to assure you our cooperation and our determination to control our expenditures so that we do not exceed our financial resources." Aiello assured the Mayor and the Comptroller that the Board would direct the Chancellor to supply the reports required throughout 1980. However, on the issue of control, the Board President took a rather firm stand which, while not atypical of the one which the Board of Education had taken historically, was particularly strong under the circumstances. He stated,

> The Board of Education cannot agree to interference by the Office of Management and Budget in the hiring of either pedagogical or nonpedagogical personnel...

> Over the long run we believe that the Board of Education should have more fiscal autonomy, not less, and we want to be certain that no technical agreement on financial management and monitoring compromises that autonomy. When the Board's budget is once again balanced, we will reduce or eliminate external reporting requirements, although we will, of course, maintain controls adequate for internal monitoring.

GATHERING THE TROOPS: THE FY '81 BUDGET

The budget process for the 1981 fiscal year did not start on a very positive note. Board President Stephen Aiello's provocative letter to the Mayor and the Comptroller would arrive on their desks three days after the Chancellor had made public his budget message to the Board of Education. Moreover, the school administration had not yet recovered from the political fallout of the 1980 crisis. As budget director Dall Forsythe put it, "We didn't start '81 in very good shape. We had just gotten our asses kicked because of $92 million in overspending. Now it was time to come back for money." [75]

The appointment of Forsythe by the Chancellor did help immensely to mend relationships between the Board of Education and the Office of Management and Budget. He was competent, trusted, and well-liked by all parties involved. As one OMB official explained it, "Dall Forsythe's arrival on the scene improved relations between OMB and the Board. Dall, having worked for (City Council President) Bellamy, understood OMB's role. Dall contributed to the budget process. He gave us information. By hiring Dall, Frank (Macchiarola) bought a channel of information and good will." [76] Stanley Litow, executive director of the Educational Priorities, concurred, "Dall gave the Board of Education credibility. He gave us someone we could deal with. He is a reliable source of information." [77] Macchiarola's recruitment of Forsythe proved to be a key appointment. However, despite the good will that seemed to be developing, the Mayor's office and the Chancellor's office were still worlds apart on the issue of the budget. Neither pretended nor went to any great length to hide that difference.

On December 17th, 1979, schools Chancellor Frank Macchiarola submitted to the Board of Education the largest budget package on record as of that date. The $2.68 billion expense budget* included $248 million to maintain current levels of service, $29 million to restore educational programs affected by previous cuts, and $52 million for new programs. Among the programmatic items appearing in the request were $79.7 million for register increases in special education, $15 million to expand transitional classes for all eligible students and to maintain reduced class size in the first grade, and $14.3 million for remediation programs to help high school students achieve new state-mandated performance standards. [78]

As might be expected, the reaction of public officials to the Chancellor's new budget was cool. Harrison Goldin remarked, "Since the City already has a budget gap of $400 million in 1981, the City would be hard pressed to come up with programs of this kind." City Council President Carol Bellamy sarcastically commented, "It's not clear the Board of Education knows how it's spending its money. There are serious questions whether they have the capacity to judge what they need to spend and it would appear that they do not." Queens Borough President Donald Manes, usually a strong supporter of education, quipped, "We'll give very careful evaluation and consideration to the Chancellor's proposal. We always check and double check figures that come out of Livingston Street." [79]

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* It would actually come to more than $3.3 billion when pension and debt service costs are added.

The Mayor's response to Macchiarola's budget message was uncommonly reserved. However, as commentary about the Chancellor's document was making its way about the City, OMB was in the process of preparing the next installment of the Mayor's citywide financial plan for submission to the State Financial Control Board. On January 16th, that plan was revealed, and it proved to be an ambitious one. The plan was designed to balance the City's finances in 1981 instead of 1982, one year prior to the legally required mandate set by the State. Doing so would be a significant political feat for a Mayor who was up for reelection in 1981. However, carrying out the City's fiscal rehabilitation a year early would require the gravest retrenchment that the City had experienced since 1975. Koch proposed $299 million in reductions citywide for 1981. This was more than twice the amount that had been imposed during the previous year. It also called for an additional $461 million in cuts in 1982. This meant that 13,000 jobs would be removed from the City payroll in two years. According to Koch's plan, 7186 of these jobs would come from the school system. That would require the layoff of 4000 teachers; the remainder of those positions would be eliminated through attrition. In real dollars, Koch's proposal mandated $111 million in cuts during 1981 and $182 million in 1982 for the Board of Education. [80]

The 1981 "Program to Eliminate the Gap" (PEG) cast a shock wave through the City. It also became an impetus for the formation of the most formidable and far-reaching coalition on behalf of public education in New York City since the institution of community control. Even before the Koch plan was made public, as word was leaked concerning what OMB had recommended to the Mayor, the New York Times ran a scathing editorial entitled "Cutting Schools to the Bone," which explained how the reductions meted out to education were "proportionately larger than the reductions meted out to police and fire." It personally criticized the Mayor who "justifies exacting so much from the school system on the ground that it is doing an unsatisfactory job with what it has." However, it noted that the Mayor "has remained lamentably silent about where education fits among his priorities." It demanded, "The public needs a better explanation." [81]

On the same day the PEG proposal was announced, the Board of Education issued a formal public statement expressing deep disappointment with Mayor Koch for taking the advice offered by his Office of Management and Budget, which has "shown a consistent lack of understanding of the schools and the needs of our children..." [82]The strongest and most threatening reaction to the new budget came from Albert Shanker of the United Federation of Teachers who accused the Mayor of assuming that "only minority kids and children of parents who don't vote" attend City schools. "He promised Koch the toughest fight of his administration." [83] At a public meeting of the Board of Education on January 24th, Bill Scott, a high-ranking assistant to Shanker, pledged, "We are going to fight him (Koch) by registering every teacher, every parent, every eligible student in the New York City public schools and turning them out to vote in the next mayoral primary. We are going to try our damndest to have a new mayor on election day 1981..." [84]

Thus began a bitter series of exchanges between the Mayor and the union president which took place in the news media, on television talk shows, and at public meetings. Koch would not be intimidated. Never at a loss for words when on either the defense or the offense, the Mayor assured a Senate Banking Committee in Washington, during a hearing on the New York City federal loan guarantees, "Albert Shanker is not Moses, and he does not make up that budget. It is certainly expected that he would fight it. Why not? He wants more money for his teachers. We want them to work better." And for those who had wondered about his own priorities, the Mayor offered, "We're not going to lay off cops to keep teachers on the payroll." [85] On January 24th, the City Office of Management and Budget informed the schools Chancellor that it would be eliminating one thousand CETA (Comprehensive Employment and Training Act) jobs from the school system due to federal cutbacks.

The campaign to restore the school budget began to gather momentum on several fronts. Almost immediately after the announcement of the Mayor's financial plan, an "Ad Hoc Coalition" of education groups consisting of parent associations and neighborhood associations, was formed to discuss a strategy to oppose the cuts. The union was at the center of a movement called "Save Our Schools" (SOS) which coordinated two marches around City Hall and began a rather intense lobbying campaign among the City Council and the Board of Estimate. On March 14th, Albert Shanker and State Senator Vander Beatty, Chairman of the Black and Puerto Rican Legislative Caucus, held a joint news conference announcing that they were burying longstanding differences to join in a "life and death" struggle against cuts in the education budget. The teachers union had stood on the opposite side of the fence from the black community ever since the divisive battles over school decentralization in the sixties. Now these two groups were pledging to stand together in a common fight against a Mayor whom they alleged felt safe making reductions in an education system which is now largely populated by minority children whose parents don't vote. They accused the Mayor of "counting votes." Beatty announced, "I'd like to thank Ed Koch for bringing us together." [86]

In the meantime, the Administration at the school headquarters was launching its own campaign. The Chancellor made his usual appearance at the joint hearings of the City Council and Board of Estimate regarding the Mayor's Program to Eliminate the Gap. As might be expected, Chancellor Macchiarola protested the unfair burden which the schools would be required to absorb. But Macchiarola's efforts went beyond the elected officials of the City. He and his budget people also began meeting with the editorial boards of the major newspapers of the city in order to discuss the severity of the proposed cuts, their inequity, and the impact they would have on educational services. In addition to this, the school administration began to urge its principals, district superintendents, and professional education groups to lobby local council members.

A third and rather distinct campaign was being organized under the auspices of the Educational Priorities Panel. EPP had been a long-time critic of the Board of Education and the way it spends its money. However, even they were concerned about the size of the reductions reflected in the Mayor's plan. As their executive director Stanley Litow explained it, "Koch came up with more than $100 million in cuts. We were forced at that point to attack PEG." [87] Nevertheless, the EPP strategy was quite different than that taken by the union and the Board of Education. The latter two groups opposed all the cuts, which was a function of their hard-driving political approach to the budget debate. EPP was more conciliatory, accepting some cuts, opposing others, and hoping to come up with a compromise that would lead to smaller reductions in the school budget. Thus, EPP was not in total agreement with either school officials or the union. As Litow pointed out, "We again here hit loggerheads with the Chancellor's Office. They wanted to oppose all cuts. We felt that this didn't leave anyone options." Litow was particularly critical of the union strategy, "SOS also said no cuts. It was a complication for us. We never felt they played a significant or useful role... They may have exercised some muscle. But many people said that SOS should have been called "SOJ", for Save Our Jobs." [88]

On March 10th, EPP presented a report on the PEG proposals at the joint hearings of the Board of Estimate and City Council. The major point of the report was to argue, "The proposed PEG reductions would devastate the education system." [89] It noted that the schools were being asked to absorb 64% of the personnel cuts planned by the Mayor. The report also offered a counterproposal which focused on administrative savings and other gap-filling measures. On March 31st, the New York Times ran an editorial entitled, "Better Homework on New York's Schools," praising the Educational Priorities Panel for its analysis of the Koch budget and for finding $60 million in administrative savings that could be implemented. The work done by the EPP was beginning to substantiate the argument that the school Administration's and the union's reactions to the Koch budget were not just a cry of wolf. However, there was still a long process of negotiating to be conducted before a final budget was formulated. Whether the budget process would prove to be the political contest that the union and school officials perceived it to be, or whether it was responsive to the voice of informed reason, as hoped, remained to be seen.

As the machinations of the budget process moved into full gear within the City, negotiations regarding the State budget were underway in Albany. These would determine the amount of State aid to be expected for local school districts. When Governor Carey announced his new budget on January 21st, he made it clear that he was temporarily shelving any plans for significant changes in the education formula. The total $13.8 billion state budget called for an increase of education aid by $188 million, $103 million of which was destined for New York City. The education proposal received a moderately cool reception from Republican leaders, one of whom labeled it "a political document," while Assembly Speaker Stanley Fink said he would recommend an increase in education aid.[91]

By the end of March, Republican and Democratic leaders in the legislature would agree to a budget which raised aid to education by $319 million statewide. That agreement was based on the assumption that there would be no spending reductions for "property-rich" districts in the State. Of the total aid package, $124 million was set aside for New York City. The New York City figure was not arrived at, however, until a previous agreement had been worked out between Assembly Speaker Stanley Fink and Mayor Edward Koch. At the end of a Sunday afternoon meeting held on March 23rd, Fink and Koch announced a pledge on the part of the Mayor, that of the $124 million in anticipated State aid to education that was coming to New York City, no less than $60 million would go to the schools.

The final composition of the state education budget and the manner in which it was designed were indicative of two significant school finance issues which were nowhere near a resolution. First of all, the new state budget made it clear that while incremental supplements would be forthcoming to property-poor or municipal districts in the name of equity, no radical redesign of the school finance formula was in the offing. Secondly, it was demonstrated that there were no guarantees within the budget process which assured that whatever supplemental aid was squeezed out of the legislature would in fact find its way to the schools. To the contrary, the process demonstrated that the practice of supplantation had become so open and matter-of-course that it was nearly an institutionalized aspect of the intergovernmental finance system between the state and the local governments.

Meanwhile, as the local budget development process in the City began to approach its final stages, there began to emerge some signs of a moderate, although far from complete, reconciliation between the Board of Education and the Office of Management and Budget. On February 20th, a letter of agreement was sent to Comer Coppie, Executive Director of the State Financial Control Board, which outlined a set of procedures designed to allow City budget officials to monitor the financial activities of the school system, but at the same time did not compromise the decision making perogatives of the Board of Education. The letter was signed jointly by the Chancellor, the newly elected Board President Joseph Barkan, the Director of the Office of Management and Budget, and the First Deputy Comptroller. The procedures were based upon those which had been originally proposed by the Mayor and the Comptroller in their December 11th letter to Board President Aiello.

The Mayor delivered his executive budget to the City Council and Board of Estimate on May 9th. In his own words, this $13.6 billion package was "the first truly balanced budget for the City of New York in more than a decade." [93] This budget-balancing act, carried out one year earlier than required by the City's four-year financial plan, brought the Mayor widespread editorial praise in the local media. The only major change in the budget from the original January proposal was a $91 million increase for the Board of Education. That increase, when taken on its face value, could be seen as both significant and misleading. Approximately $69 million of the total was included to cover mandated increases in services and the loss of $15 million in federal aid. Approximately $13 million had been restored to the education budget in order to maintain basic instructional services. The net result of the Mayor's executive budget meant that the Board of Education would still be left with a $89 million PEG cut.

Within three weeks of the time within which it was made public, the Educational Priorities Panel published its own analysis of the Mayor's budget. As it had done in its previous report, the EPP criticized some of the education cuts proposed by the Mayor, endorsed others, and made several of its own recommendations on how the Board of Education might reduce its spending. However, the bottom line message of the report, which was presented in a testimony before the City Council, suggested that $34 million must be restored to the education budget for next year in order to maintain the current level of service within the school system. [94]

In the meantime, the Chancellor stepped up his own campaign on behalf of the education budget. On May 30th, Macchiarola called a meeting which was held in the auditorium of Park West High School in Manhattan.

He invited the directors of all the major offices within the central headquarters of the school system and the superintendents of the thirty-two community school districts. However, the major purpose of the meeting was to bring together the nearly one thousand elementary, middle, and high school principals of the City school system. The meeting was the first of its kind. Since the institution of decentralization in 1968, the Chancellor of Schools had never taken it upon himself to meet en masse with the community school district principals who both legally and practically reported to their own community superintendents. Macchiarola decided to break with precedent. His meeting was attended by more than 1200 educators from around the city. Many perhaps came more out of curiosity about what this Chancellor, who had been an outsider to their system, had to say, than out of any sense of responsibility or deference. The ground rules were firmly set. No press would attend. The Chancellor and his staff would make a series of presentations. Then representatives of the various principals' associations would be allowed to ask a representative set of questions of the Chancellor.

The Chancellor began with a general status report on the schools. He discussed the problems of the system and the major programmatic changes of the past year. He noted the accomplishments, giving particular attention to a preliminary report that showed a rise in citywide reading scores, but also noting improvements in attendance and some significant managerial innovations. He congratulated those present for their good performance. He then went on to the major topic of discussion, the budget. Budget Director Dall Forsythe presented the large audience with a detailed report on the Mayor's proposed budget and what it meant to the schools. The Chancellor explained that while 19% of the City expense budget for the previous year had gone to education, 30% of the PEG cuts that the Mayor was proposing would come from the schools.

As the Chancellor got into the heart of his presentation about the budget, it became quite apparent to those who were in attendance, that the purpose of this meeting was not merely to inform. To the amazement of many of those educators who had once perceived Macchiarola to be "Koch's Chancellor," what the meeting turned out to be was a call to political action on behalf of the school budget. Macchiarola was unambiguous in his opinion about City budget officials, saying, "The Executive Budget was developed by City budget officials, who are distant from you and our children, not by those who understand schools and children's needs." He was straightforward in pointing out to the principals that the budget problems of the school system were their problems, "...however difficult the cuts of the past have been, the proposed cuts are even worse because they are targeted at the schools and at the districts."

The Chancellor was unrestrained in his call for action exclaiming:

> I hope your voices will be raised with mine in proclaiming that our schools are a vital service and that our children are essential resources. Let me be more specific. I am not asking you simply to content yourself with moral indignation or an occasional letter to the editor. I am asking all of you to speak out forcefully for schools.

Macchiarola was also quite direct in telling the group before him just what he expected of them and how they could do it:

> Next week the City Council and the Board of Estimate will be holding hearings on the Executive Budget. I urge you to write and to telephone the Mayor, the President of the City Council, the Comptroller, the

> Borough Presidents, and the members of the City Council. Do not stop there. Write, telephone members of the State legislature and ask them to speak out for schools. Ask your relatives, friends and neighbors to do the same.[95]

In addition to providing each participant at the meeting with the budget and management reports of the Chancellor, a packet of material was distributed where enclosed was a League of Women Voters' publication including the names, addresses and phone numbers of every elected official in New York City. Thus began the last stage of a concerted lobbying campaign on behalf of the school budget. Principals and district superintendents began meeting in groups with city council members, state legislators, members of the Board of Estimate, and representatives of the Mayor's Office. As one top level person from OMB described it, "This year (FY '81) had the most political advocacy of all. They (school people) felt that they had to do that to maintain their status. The size of the cut caused them to act very strongly." [96]

As the Chancellor went about the City in an effort to raise support for the school budget, the Mayor went on his own tour criticizing the Board of Education and the way it spent its money. During one public meeting held at PS 98 in Queens, Koch described the school budget as being out of control and complained, "I don't have control over the Board of Education budget. I'm not allowed to tell them how to spend their money." [97] Once again the Mayor was underlining a point that he had been making all along - that his attitude towards the school budget was in some part motivated by the fact that, unlike the Mayoral agencies which report to him directly, the institutional arrangement set in place with regard to the schools did not allow him to demand any direct accountability from the schools once the budget was allocated.

On June 4th, Chancellor Macchiarola made his final appeal on behalf of the FY '81 budget before the joint hearings of the Board of Estimate and City Council. Propelled by the momentum that was evident at the principals' meeting only a few days before, the Chancellor began his testimony with a strong and direct style, touching a sensitive part of the legislative bodies: "it is unfortunate that I must talk of the needs of our children in the context of an Executive Budget that does not offer a sense of hope. It is more unfortunate that some very significant needs that were recognized by the leadership of New York City government two short years ago, when I first became Chancellor, now need to be pleaded anew." In response to the Educational Priorities Panel Report, which advocated a $34 million increase in the Mayor's budget, the Chancellor pointed out that the EPP recommendation was only a "hold the line proposal." He also emphasized that any restoration below that amount would result in increased class size, closed after-school programs, and reduced support services. He asked for a full restoration of the $89 million in PEG cuts exacted by the Mayor, promising in return an expanded transitional class program, reduced class sizes in the first grade, school-based support teams for special education, new programs for the gifted and talented, and more after-school programs. The Chancellor closed his testimony with an appeal to the political sensibilities of the legislature, offering an interesting commentary on social structure of the city and its relationship to school system politics:

> ...in the City agency with the greatest number of middle class employees, we will be the only agency to lay off employees, presenting a novel twist to saving the City for the middle class...
> The child denied teachers today will need counselors and psychologists tomorrow, and prison guards and wardens the day after. Our budget is truly the capital budget of human resources. [98]

Macchiarola left City Hall with a pledge from Finance Committee Chairman Edward Sadowsky to add more money to the education budget. It soon became apparent, however, that what Sadowsky had in mind was the $34 million sum advanced by the Educational Priorities Panel. On June 11th, as the Council went into its last round of negotiations on the FY '81 budget, the New York Times published an editorial entitled, "School Children Should Come First." The editorial cited both the Chancellor's testimony and the EPP report on the potential damage inflicted by the Koch cuts and recommended that "classroom services ought to be at the top of the list of restorations as the Board of Estimate reviews the Mayor's proposals." [99] The Educational Priorities Panel had obviously made a convincing case on behalf of education. The question was whether Koch was persuaded.

The Council leadership originally went into their negotiations with the hope of adding $60 million to the Koch budget, $34 million of which would go for education. When it appeared that the Board of Estimate was supporting that Council plan, Koch came up with a counterproposal that would increase the total city budget by $35 million and shift $6.3 million in city funds to education. The Mayor also said that he would make available to the Board of Education $15 million in cost savings that OMB had identified in the current school budget. What Koch was doing in effect was giving back to the schools their own money. The Council leaders immediately turned down this offer by the Mayor, and on the next day (June 12th), came up with a new package that would increase the total City budget by $49 million, with $29.5 million going to education. On that same day, a compromise was finally worked out with the Mayor, A total of $39 million was added to the proposed Executive Budget. Of that, $21 million would be allocated to the Board of Education, considerably less than the $89 million the Chancellor had asked for, and even less than the $34 million "hold the line" supplement recommended by the Educational Priorities Panel. That agency to receive the next highest supplement in the final budget was the Police Department, which got $17.2 million restored.

As the long series of battles over the FY '81 budget seemed to be coming to an end, budget director Dall Forsythe was asked to comment on the $21 million increase that the Mayor and the legislature had finally provided in comparison to his previous proposals. Forsythe replied, "I obviously think its better. It's gone from a catastrophe, to a disaster, to simply a set of serious problems for the next year." [100]

"FROM CATASTROPHE TO DISASTER": FY '81, PART II

As matters turned out, Forsythe's words proved to be less descriptive than they were prophetic. On June 25th, the Municipal Assistance Corporation issued a report on the City's proposed spending plan for 1981. It concluded that the plan "aspired to, but did not guarantee a truly balanced city budget for the coming year." [101] As the Mayor began to meet with Governor Carey and State legislative leaders, he discovered that the City would not get $142 million in state aid that had originally been anticipated. At that point, Koch began to issue warnings concerning possible layoffs to balance the City budget.

In mid-July, Koch sent a letter to Board President Joseph Barkan stating that he would have to cut $29.5 million from the Board of Education's 1981 budget in order to cope with a fiscal deficit resulting from recently negotiated labor contracts. As proposed, the Mayor's request would require $26.5 million in the form of personnel cutbacks, and $3 million from the supplies budget. On Monday, July 21st, the Chancellor and Board President Barkan met with Deputy Mayor Wagner to appeal the cuts, but in Barkan's words, "All he gave me was sympathy." [102] Two days later, Koch and Comptroller Harrison Goldin sent a joint letter to Barkan stating that insufficient progress had been made by the Board of Education in establishing the monitoring techniques it had agreed to set up. It was particularly critical of the slow progress that had been made concerning the integration of the Board of Education's financial management system with that of the City government.

On August 11th, the Mayor made public his new financial plan. He announced it on the opening day of the Democratic convention in New York City. He used the unveiling as a platform for requesting more federal aid to the City. He accused President Carter of broken promises, and threatened, "If you don't carry the cities of the country, Mr. President, you ain't going to be the next President." [103] These were strong words coming from a Democratic Mayor hosting a national convention for an incumbent President. But they were no more harsh than the details of the plan that was about to be revealed. The Mayor's proposal called for $87 million in midyear cuts in the 1981 budget citywide. Of this total, $12 million would come from the school system.[104] While this amount was considerably less than the $29.5 million the Mayor had just threatened to ask for, it brought the total cuts imposed upon the Board of Education for the 1981 fiscal year up to over $100 million. This was only $11 million less than the amount that Koch had originally requested in his January PEG announcement. On August 21st, Koch met with Comer Coppie of the State Control Board, State Comptroller Edward Reagan, and Special Deputy State Controller Sidney Schwartz, all of whom were critical of his plan because, in their estimation, many of the balancing devices incorporated in it were not on firm ground. The Mayor asked Chancellor Macchiarola and Police Commissioner Robert McGuire also to attend the meeting at City Hall in order to explain to the members of the Control Board why further reductions in their budgets were difficult. The Control Board officials accepted their arguments by the end of the ninety-minute meeting. On September 17th, Koch, Macchiarola, Barkan, and City Comptroller Goldin sent to Comer Coppie a final agreement outlining the implementation of an improved financial management system at the Board of Education. The letter described the measures that had already been taken, the steps that remained, and those matters which "the Board contends that it cannot agree to." While there was a basic consensus concerning the exchange of information, school officals continued to refuse to accept City approval of its budget modifications.

The 1980-1981 school year began that September with the layoff of 2200 teachers. Although most were regular substitutes, it was the largest single layoff action implemented by the Board of Education since the height of the fiscal crisis in 1975

ELECTION YEAR FORTUNES: THE FY '82 BUDGET

Despite the teacher layoffs mandated by the Mayor's financial plan, the start of the 1980-1981 school year did offer some genuine signs of hope. The first sign came from within the school system itself when in September, the Chancellor announced the results of the annual citywide reading test. The scores from the California Achievement Test taken in the spring indicated a marked improvement in all grades from two through nine as the percentage of students reading at or above the national average rose from 40.3% to 46.7% over a one-year period. The results of the test were greeted with guarded praise from both municipal officials and the local press. To be sure, good news was not usually expected from Livingston Street, so the announcement was a welcome one. But many observers assumed a wait-and-see attitude. Were the test scores the beginning of a real turnaround in the public schools, or were they merely a temporary aberration? Of course, there were also those unconvinced cynics who questioned the very validity of the scores themselves.

On September 29th, Mayor Edward Koch and City Council Finance Committee Chairman Edward Sadowsky met to work out a final amendment to the 1981 budget. In exchange for Council approval of an increase in the property tax, Koch agreed to restore $9 million to the expense budget. Most of this would be used to hire 500 more patrolmen in the Police Department, but some would find its way to the schools. While there was no reversal of the decision on teacher layoffs, approximately 1060 school crossing guards that had been scheduled for dismissal would be kept on the payroll. An additional $1 million would be given over to the schools for building maintenance.

On November 23rd, Special Deputy State Comptroller Sidney Schwartz issued a report predicting that the City would end the 1981 fiscal year with a budget surplus. According to his estimate, this surplus could amount to as much as $156 million. If this were true, it would be the first surplus in the City budget in over twenty years. Schwartz, whose approach to financial matters was characteristically cautious, was not inclined towards such optimism with regard to the New York City budget. However, the truth was that the City had received higher than anticipated revenues during the first four months of the fiscal year, and this trend was expected to continue. The City Office of Management and Budget responded to the Schwartz announcement with its own projection of a slightly lower surplus. In an official financial plan statement prepared for the United States Treasury Department, City OMB Director James Brigham calculated an end of year surplus amounting to $109 million.[106] The spring and summer of that year were occasioned by a series of predictions by the State comptroller, the City comptroller, and OMB, all of which tried to get a fix on just how much surplus cash the City would have on hand by June of 1981. All contributed to an emerging climate of hope which surrounded the preparation of Mayor Koch's election-year budget.

Schools Chancellor Frank Macchiarola would take full advantage of the tenor of the times as he went about the task of preparing his budget message for the 1982 fiscal year. His agency had just endured the largest reductions of any in the city. In the face of these serious cuts, the schools were showing signs of progress - a feat which at least partially disarmed the perpetual critics. For the first time since the outbreak of the fiscal crisis, it also appeared that the City was finally getting its own financial house in order - a factor which in and of itself had to make this year's budget process somewhat smoother. Moreover, it was now clear to all concerned that Edward Koch was about to run for reelection on a service budget - that is, a budget which promised more rather than less service to the people of this troubled city. Macchiarola delivered his budget message to the Board of Education on December 15th, declaring;

> The New York City school system has withstood six years of austerity. But because of our children's resilience, and the efforts of our staff, we can point with pride to some modest improvements, even absorbing some hundreds of millions of dollars of service cuts. [107]

The Chancellor's budget proposal amounted to $3.1 billion. The local tax levy and general state aid portion of the total was $2.7 billion. This represented a $392 million increase over what the schools received from the City in the previous year. The Chancellor was quick to point out, however, that his budget request included $18 million in state funds that City Hall had illegally laid claim to through the practice of supplantation. He also noted that $276.6 million of the increase was needed simply to "just keep abreast" of rising costs.

The fastest growing part of the Chancellor's budget was that devoted to special education. Due to increased compliance with federal mandates, special education costs were projected to climb over one year from $296 million to $370 million. The budget also included a substantial sum of money for improved building maintenance and repair ($25.2 million). However, the underlying message in the Chancellor's budget request was a clear one. It demanded that the City "invest in basics." [108] Included in the budget document were proposals to expand full-day kindergartens, upgrade vocational education programs, and increase course offerings in the high schools. Most important of all, the Chancellor was requesting funds to support that program which was the centerpiece of his Administration's instructional agenda - Promotional Policy. Promotional policy would cost, according to this estimate, $63 million. Approximately $34 million of that amount was requested from the City. The remainder would be paid for out of federal and state reimbursable funds.

The Chancellor's large, ambitious request aroused criticism in the local press. The New York Post, in customary fashion, chastised the Board of Education for its "bloated bureaucracy," [109] and the Daily News ran an editorial on the Chancellor's "Mind Boggling Budget." [110] To the surprise of many, however, reaction from the Mayor's Office of Management and Budget was moderate and supportive. Assistant OMB Director Edward Burke was quoted as saying, "A year ago the Board (of Education) was overspending its budget by $100 million. This year, they are running a small surplus, and the City already has some of the increases set aside." [111]

Interspersed with these new words of encouragement emerging from City Hall were signs of a more lasting reality. On December 10th, Mayor Edward Koch announced that he was about to launch a new legislative campaign in Albany. The purpose behind it would be nothing less than an amendment to the state education law which would give the Mayor virtual control over the Board of Education. Koch wanted to expand the membership of the seven-person Board so that he could appoint a majority of its members rather than just the two which he appointed under the current law. By bringing such a proposal to Albany, Koch was escalating the control issue from a technical discussion of the budget to a more basic question of institutional reform. As might be expected, the five Borough Presidents who choose the majority of the Board members reacted in strong opposition to the plan, while their appointees protested Koch's attempt to "politicize" the school system. Another strand of strong though quiet resistance came from the Chancellor himself, who dispatched his own legislative lobbyist to Albany to help organize the struggle against the Koch takeover. Later that month, the Board of Education voted to sue the Mayor for the state education funds that were supplanted to balance the City budget. Macchiarola delivered the message of the impending suit to City Hall personally, and, armed with a threat, left the Mayor's office one afternoon in early January with $19 million in supplanted state education funds.

In the meantime, Albany was about to go through its annual ritual on the preparation of the state education budget. This year, the events would begin a bit early. On September 20th, the Governor's Special Task Force on Equity and Excellence in Education released an interim report demonstrating that between 1974 and 1978 spending differences among local school districts had been exacerbated. On January 19th, Governor Hugh Carey presented his new budget to the legislature. His proposal called for only a 2.17% increase in education spending statewide, but, in an attempt to effect a Levittown-related remedy, would decrease aid to wealthier school districts and redistribute it to the poorer ones. Unfortunately, the impetus that could have been provided by the September report never reached the legislature. True to form, Republican legislative leaders criticized the Governor's budget. Responding to the Robin Hood analogy that had come to surround attempts at school finance reform, Senator Joseph Pisani, a Republican from Westchester County, remarked about the Governor, "...even a superficial glance at our suburban districts will show that he is functioning more like a random mugger, who can't tell the rich from the working class." [112] That year's budget negotiations between the Governor and state legislative leaders would go well beyond the April 1st deadline set by law. An accord on state education aid was not reached until May 8th. While it would increase the state education budget by $287 million, it was done with the understanding that no school district would receive less aid than it had in the previous fiscal year. [113]

Mayor Koch announced his financial plan for 1982 amidst great ceremony on January 16th. It was celebrated as the "second genuinely balanced budget in the City's recent history" and, in the Mayor's own words, was said to "mark the end of New York's search for fiscal recovery." [114] For the first time since 1975, the City budget would include "significant service enhancements," but at the same time would be constructed according to standard and acceptable principles of accounting. This was a remarkable achievement for which the Mayor would receive unanimous praise in the local media. Koch's election-year budget, however, would prove to be a telling commentary not only on his own personal priorities, but on his perceived preferences of the voting public. The greatest infusion of funds would take place in crime-related services - adding 1500 patrolmen to the Police Department, 200 patrolmen to the Transit Authority, and 336 officers to the Department of Corrections. The Board of Education was slated to receive 440 new positions.[115] This was not a very substantial increase, given the relative size of the school system, the severity of the cuts it was recently required to absorb, and the significant rise in mandated services. Moreover, Koch's proposal left the greatest amount of uncertainty with regard to the Chancellor's key program - Promotional Policy - promising only to leave its future to a more personalized level of negotiation: "Though funds are not now available for the Board of

Education's proposed student promotion policy, the City will work closely with the Board to develop an affordable program and identify state, federal, and city sources to support it." [116]

On the day after he presented his new financial plan, the Mayor appeared before a meeting of the United Parents Associations, where he praised the education system of the City, claiming "things are changing and looking better." [117] Encouraged by the reading scores announced in September, candidate Koch was now becoming more inclined to take note of the positive achievements that were growing apparent in the public schools. Nevertheless, the mood within the school system itself was far from jovial. The Chancellor had recently made public an implementation plan for the closing of fifteen schools around the City which would necessitate the relocation of 4500 elementary and middle school children. At that point, Macchiarola became the target of a strong lobbying campaign conducted by local politicians and parent groups, all of whom were determined to protect their community schools from becoming the victims of local retrenchment. In its more usual political form, the campaign was carried out through meetings demanded of the Chancellor by an array of community representatives, including parent group leaders, city council members, state legislators, and even congressmen. In its more militant form, these efforts would result in formal appeals to override the Chancellor's decisions that found their way to the Board of Education, the State Commissioner of Education, and the courts. In one extreme case, the Chancellor found it necessary to supercede a community school board which refused to close a school that was on the list for closure.

On January 20th, Ronald Reagan was sworn in as President of the United States, promising cutbacks in federal aid to urban areas in general, and education in particular. Therefore, as local municipal officials began to anticipate the temporary fortunes growing out of an election-year budget, further speculation began to emerge regarding the more permanent consequences of federal retrenchment. On March 12th, Mayor Koch held a press conference at City Hall where he offered an initial estimate, putting the cost of federal cutbacks for New York at $353 million in 1982.[118] Soon thereafter, State Commissioner of Education Gordon Ambach addressed a meeting of elementary and secondary school teachers where he predicted a loss of $220 million in federal education funds statewide.[119]

On March 10th, Chancellor Frank Macchiarola appeared before a joint meeting of the Board of Estimate and City Council to provide testimony on the Mayor's 1982 financial plan. He began by pointing out that because of the proposed Reagan cutbacks, the City schools stood to lose between $106 and $125 million in federal aid. He then noted that while the City was planning to fund the conversion of 2026 lost federal CETA positions by creating jobs on the municipal payroll, only 7 of those conversions were going to education. He further explained that while the school system had been required to absorb 58% of the dollar retrenchments and 67% of the job losses during the 1981 fiscal year, it was scheduled to receive only $20 million for new programs in 1982. He added that this $20 million represented disputed state funds which the Mayor agreed to "at least in part to avoid a suit."[120]

Macchiarola closed his testimony by restating the budget request he had made to the Board of Education in December. He placed particular emphasis on the need for $34 million in local tax levy funds to implement his promotional policy. In the past, the Chancellor had done moderately well with his monetary appeals to the local legislature. However, in this election year, the dynamic of the budget process was different. And the new dynamic was not necessarily one which benefited the schools. In the past, the Chancellor's appeals to the legislature had focused on the reduction of impending cutbacks. Now, he was asking for the enhancement of projected increases. In the previous year, the crisis atmosphere surrounding the school budget helped mobilize the constituency for public education in the City. This year's optimism comforted a dead calm. The most visible pawn in the budget negotiations of this year was sitting in a rather vulnerable position. Promotional policy enjoyed only mixed support in the educational community. Some disagreed with it philosophically, others believed it was too expensive. Indeed, if the Chancellor could not persuade his philosophical adversaries, it was crucial for him to show that the new policy that he was advocating could be paid for. Thus, the battle of the 1982 budget became a highly personal one.

On the day before Mayor Koch was scheduled to deliver his Executive Budget Message for 1982, OMB Director James Brigham announced that the City would end the 1981 fiscal year with a surplus of $243 million. This was almost twice the amount that he had originally predicted. He said that the money would be used to help offset the impact of the federal budget cutbacks promised by Ronald Reagan. The $14.7 billion Executive Budget released by Edward Koch on May 12th did not include any great surprises. In a manner consistent with his original January financial plan, the budget allowed for the hiring of 1500 patrolmen in the Police Department, 300 new police officers in the transit and housing authorities, and 627 corrections officers. The Mayor was direct and unambiguous in explaining where his priorities were, "No issue is more important than personal security and public safety. That is why my first priority in the restoration of essential services has been to increase the City's police protection." [121]

The $2.95 billion allocated to the Board of Education in the Mayor's Executive Budget represented a 7.7% increase over what it had received in 1981. A major portion of the funds ($18.9 million) was put aside to cover register increases and program enhancements in special education. Monies were also provided to pay for federal CETA conversions ($11.3 million), the expansion of the school security force ($5.4 million), and the replacement of obsolete equipment in vocational education ($5.0 million). In total, 568 personnel were to be added to the Board of Education payroll. Since the announcement of the Mayor's January financial plan, negotiations were taking place between the Chancellor's Office and OMB regarding Promotional Policy, which led school officials to lower the sum of money requested of the City from the original $34 million to a revised figure of $20 to $25 million. Nevertheless, the Mayor's Executive Budget included only $7.1 million for Promotional Policy. [122] It was clear at that point that the Chancellor had a lot of work to do before the City Council and the Board of Estimate took their final actions on the Mayor's budget in June. That task would be a lonely one for the Chancellor, but, as things turned out, he did not proceed from a position of weakness.

In mid-April, Macchiarola had made public a report prepared by the Office of the City Comptroller on the subject of financial controls within the school system. The major finding of the report, which was completed a month prior to its official release, stated: "In the aggregate, the Board of Education has made significant progress toward improving its financial controls since last year. This is evidenced in the contrast in financial condition existing in December, 1979 with December, 1980." [123] This was a flattering assessment from a unexpected source. City Comptroller Harrison

Goldin had been a major critic of the financial practices at Livingston Street and was one of the first to call for the establishment of new monitoring mechanisms by the City. His office was a key recipient of the monthly status reports that were being required of school officials. Thus, such a favorable finding could be seen as a first sign that the Board of Education had begun to get its own financial house in order.

A second positive sign came from another unexpected source. On May 22nd, less than two weeks before the Chancellor was scheduled to speak before the Board of Estimate and City Council on the subject of his budgetary needs, the Educational Priorities Panel published a report entitled "Belt Tightening at 110 Livingston Street." The purpose of the study was to describe how and where officials had implemented budget cuts in response to the fiscal crisis. The major finding of the report stated:

> EPP's analysis of payroll and budget data reveals that by and large, since 1976, the Board has executed a policy of supporting instructional rather than administrative service. When cuts were necessary, administrative or ancillary units were more often the target than were instructional services... The Board reduced its total staff by 4% net between 1976 and 1980. Administrative and ancillary staff decreased by 16%.[124]

The report revealed that a similar policy had been followed in 1980, when the Board of Education was attempting to resolve its $110 million deficit. At that time, staff in the central administration had been cut by 12%, while personnel in the Division of Special Education, the original source of the deficit, had grown by 35%. Thus, the general conclusion of the long-awaited study was strongly complimentary:

> Despite increasing financial pressures, it (the Board of Education) has adhered to a policy of maintaining instructional services instead of administrative and ancillary services. The EPP applauds this policy and supports the Board's efforts to maintain the level of instructional services in New York City.[125]

Coming from the group which had historically been one of the most severe critics of Livingston Street's "bloated bureaucracy," the new round of praise was well appreciated by school officials. Coupled with the favorable commentary that had emerged recently from the Comptroller's Office, it did much to bolster the rising credibility of the Chancellor's Administration.

But the best news was yet to come. And the source of that news was the schools and children themselves. On May 28th, Chancellor Frank Macchiarola held a news conference at the Livingston Street headquarters to announce the results of the most recent citywide reading tests that had been administered in April. For the second consecutive year, the scores revealed a general improvement in reading for all grades between two and nine. The scores showed that 50.7% of the children in these grades were reading at or above grade level. This represented a 4.0% increase above the 1980 scores and a 10.3% improvement over 1979. Most important of all, these scores marked the first time that New York City public school students were reading above the national average in the twelve years that this citywide examination had been given.[126]

As the Chancellor proceeded about midway through his news conference, in walked Mayor Edward Koch. Koch had not usually made it a practice to appear at the Board of Education headquarters, but at this time he wanted to demonstrate his satisfaction. Upon taking the stand before a group of cameras and reporters, the Mayor described the improved reading scores as a "Herculean increase." [127] He offered particular praise for the Chancellor, while at the same time, he underplayed the role of the seven-member Board of Education, over which he was in the process of trying to take control, exclaiming, "The Board of Education deserves credit, but the person who deserves the most credit is the one who implements policy - that's the Chancellor." [128] Koch's appearance sparked off a series of questions from the corps of reporters in attendance, several of whom focused upon the budget that was under consideration. When asked if the Chancellor's performance would be rewarded by a more generous appropriation, Koch responded, "You're not leaving me anything to discuss with the Board of Estimate." [129]

Since the first positive report on the reading scores appeared in September of 1980, the Mayor had begun to change his public posture on the school system from a highly critical position to a moderately hopeful one. However, the 1981 results of the citywide tests made school improvement an integral part of the Mayor's reelection campaign. Koch pointed proudly to the significant advancements in public education that had been made under the leadership of his Chancellor, and these achievements would be noted in public appearances, campaign literature, and even television commercials. A New York Times editorial appearing on the first day of the 1981 school year was indicative of both the improved image of the City's public schools and the political capital this image would bear during the ongoing election campaign:

> When campaigning politicians identify with the public schools, educators must be doing something right. So Mayor Koch's television advertisements touting improvements in New York City's schools, which open today, are a welcome indication of their returning health. [130]

Only six days after the announcement of the reading scores, it was Macchiarola's turn to appear at the budget hearings before the Board of Estimate and City Council. At that point in time, he was no longer just the Chancellor of Schools, he was a local hero. His presence was greeted with an ovation from the entire membership of the joint legislative bodies. Nevertheless, the Chancellor's approach was moderate and low-keyed. He noted the accomplishments of his Administration and thanked those present for their past support. He did not attack the Mayor's "miracle budget," but termed it adequate. He expressed confidence in the school system's ability to manage the basics but advised, "It is time to raise our sights."[131] The Chancellor then offered a number of educational options which could be taken if more money were provided in the budget. Included in the list were more subject classes in high schools, intensive intervention in the kindergarten and first grade, restoration of arts programs, and improved education for the gifted and talented.[132] Not included in his budget request was an appeal for additional funds to support promotional policy, an item which he chose to keep as part of his personal negotiations with the Mayor.

Immediately prior to the Chancellor's testimony before the Board of Estimate and the City Council, the Educational Priorities Panel prepared its own analysis of the Mayor's Executive Budget and submitted it to the legislative bodies. The EPP report provided a telling commentary on how the school system was faring in comparison to the municipal agencies in the City.[133] It began by noting that the $128.5 million reduction in the Board of Education's base budget over the previous two years had constituted 27.5% of the total citywide reductions. In return for this, the school

System had been allocated 20.6% of the total City expenditures. Then, turning its attention to the 1982 fiscal plan, the report pointed out that the Board of Education's portion of the local tax levy budget would decline from 19.6% to 19.3%, a difference which could be translated into $30 million. The Mayor's Executive Budget had included a provision which would pay for the conversion of a portion of the CETA positions lost under federal cutbacks. However, while the school system held 18.92% of these provisions citywide, it was scheduled to receive only 15.68% of the reimbursements. This disparity could be translated into 164 positions. Finally, the EPP report showed that of the $211 million increase for education in the 1982 Executive Budget, only $18,100,000 or 8.55% of this increase was for new services. This was a not-so-generous portion of an election-year budget, particularly at a time when the public schools were beginning to show such positive signs of growth.

On June 16th, the leadership of the City Council and the members of the Board of Estimate reached an agreement whereby they would propose adding $62.3 million to the Mayor's Executive Budget. Koch responded with a counterproposal of $24 million. On the next day, a compromise was worked out between the Mayor and the legislative leaders to add $49.1 million to the 1982 budget. The largest part of this supplemental appropriation would go toward hiring 1000 more policemen than the Mayor had originally requested. Thus, as the election-year budget was finally determined, it was clear that police was everyone's priority. Approximately $7 million was added to the Board of Education budget for Promotional Policy, thereby bringing the total amount of local support for the Chancellor's program to $14 million. This was considerably less than the $34 million that had originally been requested, and somewhat less than the $20 to $25 million that the Chancellor eventually hoped he would get.

SUMMARY COMMENTS

The budget process of the New York City school system is a case study in institutional dependency. The viability of public education in this large inner-city district is susceptible to the forces of politics at three levels of government. Recent history has shown that the schools have not done particularly well in this complex, power-driven process. In accordance with the traditional anti-urban bias that is common among state legislatures, the school finance formula of New York State has been found to be inequitable to inner-city school districts like New York. The judicial branch had been moderately supportive of the efforts on behalf of school finance reforms; however, what gains have been made in the court house have been lost in the State House and compromised at City Hall. Ironically, the ultimate solution to the inequities of state finance plans lies in the very hands that created the problem in the first place. Moreover, a significant part of the marginal benefits that have been wrought from the legislature in the spirit of fairness have been supplanted by the municipal government and applied to local deficits. Since the emergence of the fiscal crisis in 1975, the governing concept behind local-level budgeting in New York has been retrenchment. The data in the preceding pages demonstrate that the public schools have carried an unfair share of the burden resulting from the cutbacks.

There once was a time when a city like New York could look toward Washington as a source of support for those local services which cater to the needs of the poor. As the demographics of inner-city school systems would have it, education came to be a major component among that category of urban functions which serves the poor. The Reagan administration in Washington has promised a disinvestment of federal dollars with regard to urban-based programs, and education ranks at the top of the list of those services which will suffer. With regard to domestic spending, the Reagan Administration has pushed for a devolution of authority from the federal to the state level. Given what we already know about the predispositions of the state legislatures, such developments do not offer encouragement for the future of urban education.

A large part of the explanation concerning why urban school systems have done so poorly regarding the politics of the budget must be traced to the nature of their clientele. The population attending an inner-city school district like that of New York is increasingly drawn from racial minorities, linguistic minorities, and the poor - all of whom lack the kind of political leverage which is a prerequisite for success in budgetary politics. The events which characterized the three-year period described in this chapter serve to illustrate quite clearly just how politically impotent that clientele is. The strongest base of support for public education in New York City is composed of those who work in the school system, not those who are served by it. In this case, that base consisted of two major groups - the administrative leadership of the school system, led by the Chancellor, and organized labor, spearheaded by the United Federation of Teachers. Of course, as the budget battles accelerated to the height of controversy, there was a temporary and dramatic alliance formed between the union and the leadership of the minority community in the City. This may have been one of the most significant expressions of progressive politics in the recent history of the City. But most of those who follow that history would admit that it was the union which was the major force behind the alliance.

One need not imply from these observations that the United Federation of Teachers, under its controversial leader Albert Shanker, was a significantly potent force in the budgetary enterprise. To say that the UFT was the strongest group within the alliance for public education may tell us more about the strength of the alliance than it does about the efficacy of the union. The UFT absorbed the most significant number of layoffs of any union in the City and the outcome of the budget battles does not speak to the strength of the alliance.

It is fair to say that the Educational Priorities Panel - a coalition of twenty-five separate organizations - constitutes another major alliance on behalf of education in New York City. But EPP is an anomaly in New York City politics. Its source of strength is moderation, not power. It represents a rather peculiar version of interest-group politics that is not typical of the coalitions one usually reads about in the literature of political science. Among the local functions in New York City, only in education does a client group derive its forcefulness from its willingness to criticize how its service agency spends money. In reality, the EPP plays an ever-changing role in education - shifting back and forth between that of an advocate and that of consumers' union.

A large part of the dynamic behind the budget process here observed was the product of a relationship between two personalities, Mayor Edward Koch and Chancellor Frank Macchiarola. Koch's frustration with the institutional arrangement governing the Board of Education was real. He was required to pay for a large part of the bills encumbered by the school system, but he couldn't really control it. He could criticize, harass, tease, and bargain, but he couldn't rule. His desire for control was in some sense an act of political courage. Most modern-day New York mayors have dissociated themselves from the school system. Those that did not - like John Lindsay - suffered for it. Koch wanted in. He wanted in in good times and he wanted in in bad. Of course he never got in. The fact of the matter is, however, that under the current institutional arrangement, if the school system really fails, the Mayor always has the option to distance himself. In all but a few municipal agencies he doesn't have that option - and that factor has got to be a consideration when the Mayor decides where to put his money. Thus, at least part of the budgetary problem that the school system has with the Mayor must be interpreted as an institutional one.

A Chancellor whom the Mayor personally disliked would have been a real liability to the school system. Despite all the tugging and the fighting, that was not the case here. Koch liked Macchiarola, he put him on the job, and he wanted him to succeed. Macchiarola proved to be a strong advocate of the public schools. He was outspoken and politically astute. He mobilized professionals within the system in a way which was unusual for a Chancellor or Superintendent. He appealed to the local media. He managed to change the image of the public schools from that of a system which was crumbling to one where significant and positive change was in the process of occurring.

The personal attributes of the Chancellor bespeak to the political weaknesses of the school system itself. Macchiarola helped put together the strongest coalition on behalf of public education that could be garnered in New York. The reward for these efforts was the most catastrophic retrenchment of any agency in New York. In an election year, when the City was enjoying a surplus, when the credibility of the schools was on the rise, and when the Mayor was using that credibility as part of his campaign for reelection, education lost ground in the percentage of the local budget which it was being appropriated. Given the extraordinary set of circumstances which served to strengthen the hands of educational advocates during the last two years of the period studied, the best that can be said about these efforts is that perhaps they prevented matters from becoming as bad as they could have been. Given a future which promises further cutbacks in general urban aid and aid to education, there is little reason to anticipate a more encouraging outcome.

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CHAPTER THREE

RAISING COMPETENCY STANDARDS

Promotional Policy was representative of many of the principles for which the new Administration at Livingston Street stood. From a programmatic perspective, it was the foremost manifestation of the philosophy which stated, "All Children Can Learn." It symbolized an expression of faith in the fundamental educability of all children and at the same time, articulated a set of expectations to which children would be held. It was also indicative of a professional standard of accountability which was based upon the premise that inner-city schools can and should be instructionally effective.

The formation and implementation of Promotional Policy in New York City is a case study that provides us with several important lessons concerning the public policy process. It bears witness to the important role which social science research can play in determining the outcome of policy decisions. It is demonstrative of the multiplicity of parties, public and private, educator and noneducator, who participate in the policy process in a large urban school system. It is a testimony to the kind of resistance that is encountered when one tries to implement change in a system which must be responsive to the demands of a diverse constituency. Change, we will see, is particularly difficult when those to whom the system is accountable and those whom the system must serve are not one and the same.

Promotional Policy in New York City is not a unique phenomenon. It can be seen as part of a national competency movement, brought about in response to the declining literacy rate that has been afflicting American youth since 1967, and the consequential decline in public confidence with regard to the schools, the education profession, and the instructional process itself. The competency movement represents a demand for higher standards in education. It has been supported by public officials who have called for more accountability from the schools and by parent and community groups who have clamored for more effective teaching and learning. Competency standards have been embraced by civil rights advocates as a means to educational equity that will insure the benefit of a quality education to all children regardless of race or class. Higher standards have been appealed for by the business community, whose prospective talent pool is linked to the levels of skill possessed by students emerging from the public schools.

A key component of the competency movement is the administration of standardized tests. The tests currently in existence vary extensively in both form and use. Competency tests may be used for evaluative purposes in order to determine which students, schools, or districts are performing at a desired standard. Evaluative tests may also be used to identify students in need of remedial help. Diagnostic testing instruments are designed to determine the particular strengths and weaknesses of individual students in a given subject area. They measure levels of skill and are used in the planning of instructional and remedial programs. Competency tests may also be used to determine a child's eligibility for promotion or graduation. This remains the most controversial use of such tests and their application in this way has been somewhat limited thus far. As of 1980, thirty-eight states required students to demonstrate competency in basic skills by their performance on some kind of standardized test. Some twenty states have established minimum course requirements for graduation. But only several are experimenting with the use of competency tests to determine eligibility for graduation. In 1977, both Houses of Congress held exploratory hearings on the question of establishing national standards in reading, writing, and mathematics. That same year, President Jimmy Carter was reported to have entertained the idea of a national competency examination.[1]

Despite the momentum that has been gained by the competency movement, support for the use of standardized tests has been both limited and guarded. A report prepared by the National Academy of Education in 1978 at the request of HEW Secretary Joseph Califano, warned against the inappropriate application of competency tests, and issued a particular note of caution regarding their use in determining eligibility for graduation. According to the late Stephen K. Bailey, a professor at the Harvard Graduate School of Education, a former New York State Regent, and chairperson of the study group:

> ...the setting of statewide minimum competency standards for awarding the high school diploma,...is basicly unworkable, exceeds the present measurement arts of the teaching profession, and will create more social problems than it can conceivably solve.[2]

The report did recommend the use of standardized tests in the lower grades for diagnostic and prescriptive purposes. It concluded, in its characteristically cautious tone, that if properly administered, "minimum competency testing can be a positive educational development."

Minimum competency testing remains one of the most controversial issues in education today. Its proponents believe that competency testing will help restore a concern for cognitive development as the primary function of the school.[3] With this goal in mind, advocates hope that the new focus on basic skills will motivate teachers to teach more purposefully and students to work harder. Many of those who oppose the testing, however, criticize it as a response to political pressure rather than educational judgment. They claim that there is an inadequate match between the tests that are used and the skills that are supposedly being measured.[4]

It is not difficult to understand why the competency movement has been greeted with such controversy. The history of testing in the United States has been a rather mixed experience. True, many well-intentioned educators have looked upon competency tests as a tool for improving the instructional process. But there are also those who have used it as an instrument for unfair discrimination, exclusion, and tracking. Tests have been inappropriately applied to segregate certain populations from the mainstream, and in this way, have served the purposes of those who would deny some individuals or groups the opportunity of an adequate education. For these reasons, the debate over competency testing has not only been fought on instructional grounds, it has also been challenged as both an ethical and legal issue. [5]

One of the first significant legal challenges to the use of testing in education came in 1967 when a federal judge in the District of Columbia ordered a tracking system in the Washinton public schools abolished. In Hobson v. Hansen,[6] Judge Skelly Wright found that a testing system which disproportionately places poor and black students in lower tracks is discriminatory and in violation of the due process clause of the fifth amendment to the federal Constitution. Judge Wright also "breathed in" an equal protection provision to the due process clause stating that while not all tracking can be deemed discriminatory, any situation where there has been a history of past racial segregation requires close scrutiny. The judge did not rule on the validity of the achievement tests themselves.

The District of Columbia case set an important legal precedent in the application of the due process and equal protection clauses of the Constitution for protection against unfair testing practices. It was particularly relevant to situations where school systems had been recently segregated. Four years after Hobson v. Hansen was handed down, a federal district court in Louisiana held that testing could not be used as a basis for student assignments or tracking in a school system that was recently segregated.[7] That same year, a federal appeals court in Georgia ruled that a previously segregated school system would be required to function as a unitary system for several years before testing could be used for placement.[8] The rationale behind the argument was that black children had received an inferior education in the segregated schools and therefore could not be expected to achieve at the same level as white children.

Litigation with regard to the discriminatory effects of testing seemed to be moving at full steam until 1976, when the United States Supreme Court issued a ruling regarding tests that were being used for the hiring of police officers in Washington, D.C. While the examination in question was not the type of competency test that is found in an educational setting, the principle laid down by the Court was certainly applicable. In Washington v. Davis,[9] the court ruled that while the disproportionate impact of testing was not irrelevant, such a finding in itself did not constitute a violation of the equal protection clause of the Constitution. It ruled that to find such a violation, a plaintiff would have to prove discriminatory intent on the part of the defendant. In handing down this decision, the Court raised the plaintiff's burden of proof from mere discriminatory effect to discriminatory intent. While Washington v. Davis was seen by many as a setback to litigation on behalf of the disadvantaged, it did not put an end to legal challenges with regard to testing. In 1979, a federal district court in California found that the use of IQ tests for placing students in classes for the educable mentally retarded was a violation of federal law.[10] Violations cited were the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and the Education for All Handicapped Children

Act of 1975.

The first direct legal challenge to a statewide competency test took place in Florida in 1978.[11] Two years prior to that, the Florida state legislature had passed a law which required that students must pass examinations in functional literacy and mathematics as a prerequisite to a high school diploma. When the tests were first administered in 1978, 36% of the students failed,[12] and a disproportionate number of minority students were among that group. The results led to widespread criticism from a variety of groups including the National Association for the Advancement of Colored People and the statewide teachers' union. In Debra P. v. Turlington,[13] the plaintiffs challenged the legality of the statutes and the test, alleging that the instrument used inequitably discriminated against minorities, lacked validity and reliability, and measured skills that were different from those taught in schools. The federal district court, recognizing a high school diploma as a property right, found that the testing program had failed to give adequate notice of the new standards to students, and was therefore a violation of procedural due process rights. The court also considered the effects of past discrimination as a factor, and enjoined Florida from implementing its diploma requirements for four years. On appeal, the Fifth Circuit affirmed the lower court's ruling as to inadequate notice and remanded the case for further findings as to the curricular validity of the test. In 1979, a state Supreme Court in New York issued a similar finding of inadequate notice when it enjoined the Deputy Commissioner of Education from rescinding the diplomas of two handicapped students.[14] The students had been granted diplomas from their local school board but had not passed the newly instituted competency examinations required by the State for graduation.

While the courts have not rejected the use of minimum competency examinations for determining student eligiblity for graduation or promotion, they have evaluated testing practices with rather close scrutiny. What this means is that the use of such examinations has been found to be fair and legal, if certain conditions are satisfied. While no definitive guidelines have been set down by the courts at this point, a careful analysis of the case law does draw attention to some key variables. In a comprehensive review of the literature and the law, Merle McClung has identified five factors that should be considered in the implementation of minimum competency standards through testing.[15] These include:

- Appropriateness of test content so that tests should not include items of coerced belief, invasion of privacy, or unteachable or unmeasurable content
- Adequacy of phase-in period insuring that students are given adequate prior notice when new standards are to be imposed
- Instructional match so that test content reflects the objectives of the curriculum and course of study
- Protection against racial or linguistic discrimination so that tests are able to withstand scrutiny as to discriminatory motives behind their use and as to cultural or linguistic bias
- Protection of the handicapped allowing special consideration given to the handicapped where appropriate either through exemption, differential standards, or differential assessment procedures

Looking at the issue from a less legal and more educational perspective, William Spady has emphasized the important role of the instructional program in the attainment of desired outcomes with regard to competency. He suggests, Competency Based Education does not consist of evaluation and certification systems alone, but depends on the instructional system to facilitate all students' opportunities for meeting certification standards.[16] Francis Archambault has expressed an additional concern regarding the question of remediation.[17] He claims that too often states that have set new competency standards have left responsibility for remediation to the local districts without providing either additional funds or adequate diagnostic instruments for helping those students who have not achieved the desired standards. He notes that politicians at the state level often act as though achievement can be legislated. Like Haney and Madaus,[18] he warns that remediation can be one of the most expensive hidden costs of a competency program that is carried out well.

Competency testing has proven to be a double-edged sword. In the more positive sense, it may be seen as a technique for monitoring, if not guaranteeing, the delivery of quality educational services to all children. In its more perverse form and application, competency testing has been used as an instrument for discrimination, segregation, and the denial of equal educational opportunity. Thus, one of the first matters to consider with regard to the potential impact of minimum competency standards is the intention of those who put it into effect. Once that issue is resolved, the next important question concerns the care with which such a program is implemented. That care will determine whether children are the beneficiaries or the victims of the movement towards higher standards. The fact of the matter is that education has been failing. More specifically, public education has been failing the children of the poor, the minorities, and the inner-cities. A system which has no standards, no expectation of excellence, and no regard for failure can no longer be tolerated.

The proponents of Promotional Policy in New York City saw it as a vehicle for both effective instruction and educational equity. The approach they adopted was steeped in a philosophy of education based upon an extensive body of social science research. That philosophy, and the research supporting it, was no less controversial than the competency movement itself. However, an analysis of its origins and precepts is important to understanding from where Promotional Policy has come.

PHILOSOPHICAL FOUNDATIONS: THE SEARCH FOR EQUALITY

The philosophy of the Administration headed by Chancellor Frank Macchiarola was in large part a response to the sense of despair which had emerged within the educational profession. It was a reaction to the belief that the inability of certain children to master basic skills was a result of factors outside the school environment rather than within. It was a rejection of the idea that certain children, particularly those within the inner-city, are uneducable. The philosophy of despair was a convenience. It relieved educators of responsibility and provided a rationale for failure. Yet the resignation it engendered was genuine and it was built on a foundation of a significant body of social science research. It was not always the intention of the purveyors of this research to provide such a rationale, but their work was used this way, and it was used effectively.

One of the first such studies was completed by James Coleman and his colleagues in 1966.[19] The report entitled "Equality of Educational Opportunity," was prepared at the request of U.S. Commissioner of Education Francis Keppel in fulfillment of a mandate appearing in the Civil Rights Act of 1964. The law required that the Office of Education undertake a survey concerning the lack of equal educational opportunities in public schools throughout the United States for individuals because of race, color, religion, or national origin. The "Coleman Report," as it became known, was a landmark study. One of the largest social science projects in history, it involved the testing of more than 570,000 school children and 60,000 teachers, and the surveying of facilities in 4000 public schools. Prior to the preparation of the Coleman Report, the measurement of educational opportunity in the United States was usually done through an analysis of educational inputs, i.e., staff, resources, facilities, etc. The Coleman Report did that also, but then took the analysis a step further by examining educational outcomes as they were evident through achievement test data. The major findings of the report were as follows:

- Most black and white children attend segregated schools.
- The measured characteristics of these schools, i.e., their facilities and resources, showed these inputs to be equal among black and white schools.
- The measured characteristics of these facilites, resources, and inputs had little impact on black or white performance on standardized tests.
- The presence of classmates from affluent backgrounds showed a positive relationship to student performance on standardized tests.

The major conclusion emergent from the report was profound. It stated that the quantity and quality of school inputs has little or no bearing on student achievement, but that what counts is the student's home environment and peers. Needless to say, this conclusion had significant implications in terms of social policy. While it gave impetus to the cause of racial integration, it struck a harsh blow to instructional strategies based upon the principle of compensatory education. It gave rise to a plethora of studies that contributed to the notion that public funds put into educational programs in the name of equality were funds poorly invested.[20] And thus was born the idea that "schools don't matter."

In 1972, Christopher Jencks and a group of his colleagues from the Harvard Graduate School of Education completed a reanalysis of the data from the Coleman Report. Their study, entitled Inequality,[21] was as much a radical critique of the American class and social structure as it was a book about education. But while the findings in Inequality offered a provocative commentary on economic classes in the United States, they also supplied ammunition to those who were advocating a disinvestment of resources in public education. What began as a Marxist analysis of America became a tool of conservative politicians.

Jencks and his colleauges used achievement data to show how little school conditions affect pupil performance. They found that school administrators and educational experts do not know what to do in order to raise test scores, and suggested that compensatory education was a failure. They proposed that no matter what was done at the school level, only a fundamental change in the economic structure of the nation would lead to the social advancement of poor black children. Thus, in terms of the discourse on equal opportunity, what was added to the notion that "schools don't matter" was the observation "and they wouldn't be enough anyway."

The most controversial and disturbing research on school effects was the work of Arthur Jensen which appeared in the Harvard Educational Review[22] in 1969. Jensen tied achievement to native intelligence and found intelligence to be a product of genetic inheritance. He began his research with the premise that compensatory education has failed to produce significant effects in both the IQ and achievement levels of children. This being the case, he tells us, we must start to question the assumption upon which compensatory education is based. That assumption implies that IQ is environmentally determined. Jensen's work, to the contrary, suggested that genetic factors are much more significant in determining IQ differences than are environmental ones. He noted however, that the environmental factor which is relatively the most crucial is family. He discussed evidence which proposed that social class and racial variations in intelligence cannot be accounted for by differences in the environment, but must be attributed partially to genetic differences. Jensen found the manipulation of IQ scores by educational programs to be small. He presented environment as a "threshold variable," arguing that while extreme deprivation can prevent a child from performing at his or her genetic potential, an enriched educational program cannot push a child above that potential.

While the purposes, scope, and content of the forementioned studies all varied significantly, they did share common ground, some intentional, some not. Most obviously, all gave credence to the idea that "schools don't matter," and provided a rationale for reducing the national commitment to public education. Those educators who chose to do so would use this literature as an excuse for their own inadequacies - blaming the poor performance level of children on the children themselves rather than the schools they attended. This use of the social science research legitimized a cynical and desperate philosophy of education which was based upon the premise that certain children, particularly poor minority children in inner-city schools, are uneducable. The literature, however, also gave rise to a new line of research which would argue that, in certain places, under certain conditions, inner-city schools attended by the urban poor could be instructionally effective.

One of the first studies to appear in the new literature on effective schools was that conducted by George Weber in 1971.[23] Weber studied four inner-city schools in New York, Kansas City, and Los Angeles which were found to be successful in teaching reading to poor minority children. In contrast to the work that had been done before him, Weber drew some startling conclusions about the relationship between student characteristics, school performance, and achievement. Commenting on the schools he examined, Weber claimed, "Their success shows that the failure in beginning reading typical of inner-city schools is the fault not of the children or their backgrounds, but of the schools." [24] In 1974, the New York State Office of Education Performance published a study confirming Weber's findings. [25] Comparing two New York City schools - one high-achieving, one low-achieving - the research showed that the differences in student performance recorded were attributable to factors that were within the control of school personnel. In 1976, Maden, Lawson, and Sweet [26] completed a comparative analysis of forty-two elementary schools in California - half of which had proven to be effective on the basis of test scores, half of which were not. It resulted in the identification of ten institutional characteristics which were associated with the high-achieving schools. In the following year, Wilber Brookover and Lawrence Lezotte [27] of Michigan State University published the results of a study of eight urban schools - six improving, two declining - which offered a similar set of school level variables that were found to have a positive impact on student success.

The research on effective schools was appearing at the same time that new evidence was emerging with regard to the efficacy of compensatory education. Investigations of major federal programs such as Title I and Head Start were beginning to show that these efforts did produce positive cognitive and affective results for those children to whom they were made available. [28] The research on effective schools was not limited to the American scene. In 1979, a group of social scientists in London published a significant study on twelve urban secondary schools. Their book, entitled Fifteen Thousand Hours,[29] showed that the time a child spends in school not only can make a critical difference in academic performance, but it can also influence such behavioral factors as delinquency and truancy. It concluded by offering a list of school characteristics that was similar to those variables of effective instruction being identified by American scholars.

Since its original appearance in 1971, the research on effective schools has become part of a more popular literature in education. Contributed by journalists and other nonacademic writers, the new literature has directed attention to the increasing number of success stories among schools that are successful for the urban poor.[30] Taken as a whole, this scholarly and journalistic literature has been responsible for two major accomplishments with regard to equal educational opportunity. First of all, it has begun to provide empirical support to a new way of thinking in the education community. That thinking proposes that schools do matter, and therefore what happens in them makes a difference in terms of student performance. Secondly, it has lead to a new line of inquiry within urban education. That research has focused on the discovery and implementation of effective instructional strategies for those urban schools that had once been written off by many members of the educational and political community.

One contributor to the new body of literature was Ronald Edmonds, who would join the staff of Chancellor Frank Macchiarola as Senior Assistant for Instruction. Edmonds had served as Assistant Superintendent of Education in Michigan and had collaborated on a preliminary study of effective schools with Lawrence Lezotte and another colleague from Michigan State. Their work, which began in 1974, involved 10,000 students from twenty elementary schools in the Detroit Model Cities Area. Using data from the Stanford Achievement Test and the Iowa Basic Skills Test, and controlling for family background and school environment, Edmonds and his colleagues found that family background neither causes nor precludes instructional effectiveness in urban elementary schools.[31] That initial study served as an impetus for the "Search for Effective Schools" project which Edmonds directed while on the faculty of the Harvard Graduate School of Education.[32] Conducted with a Cambridge colleague, John Fredericksen, the purpose of the Harvard-based project was to confirm those institutional behaviors and circumstances most responsible for creating and maintaining a climate of pupil progress and instructional success. It would go beyond the original Detroit data base and include five elementary schools in Lansing. Student performance was measured through the use of standardized tests. A successful school was defined as one which eliminates the relationship between pupil performance and social class. Considering the results of his own work in the context of the larger body of literature on the subject, Edmonds has identified the following tangible characteristics which he believes to be indispensible to schools that are instructionally effective for poor children:

- Strong administrative leadership
- A climate of expectation in which no children are permitted to fall below minimum but efficacious levels of achievement
- A school atmosphere which is orderly and conducive to instruction
- A set of priorities which demands that pupil acquisition of basic school skills takes precedence over all other school activities.
- The use of some formal means by which pupil progress is frequently and regularly monitored 33

The Edmonds research would play a major role in defining an overall instructional strategy for the Administration at Livingston Street. That strategy called for a focus on the development of basic skills, with a particular concentration on the early childhood and elementary grades. It included the selection and application of standardized testing instruments for the periodic evaluation of student performance. It was based upon a belief in the fundamental educability of all children regardless of race or class. The statement, "All Children Can Learn" was meant to be both empirical and normative in nature. It was more than a statement of fact growing out of a select body of social science research. Given the context of the literature from which it emerged, it represented a claim that the expectations with which educators approached the task of instruction had a causal bearing on the educational outcomes that would be achieved. It did not mean that all students could be expected to function at the same level of achievement, nor was it designed to disregard the severe obstacles that children from disadvantaged backgrounds would need to overcome. The basic message to be carried was that if properly taught, all children were capable of mastering a minimally acceptable level of basic skills. Thus, in a philosophical context, the corollary of the statement proposing "All Children Can Learn," was the mandate requiring "All Children Must Be Taught."

FROM PHILOSOPHY TO PRACTICE: PROGRAMMATIC INNOVATIONS IN THE NEW ADMINISTRATION

The Search For Effective Schools Project that was begun in Michigan and completed at Harvard set the stage for an experimental program of school site intervention in New York City that was administered through the Office of the Chancellor. The "School Improvement Project," as it was called, was an attempt to help participating schools increase their instructional effectiveness through the development of those practices and conditions found in the research to be conducive to successful teaching and learning. Edmonds initiated the New York City project in the 1978-1979 school year. The purpose of the first phase was to validate those characteristics of effective schooling that had been identified in his previous work in Detroit and Lansing. In order to examine the relationship between these factors and educational outcomes, Edmonds developed case studies of nine New York City elementary schools. The result of the case studies was a confirmation of the original research findings and the validation of those characteristics which were believed to be instrumental in distinguishing between effective and ineffective schools.[34] In brief, these included strong administrative leadership, a school-wide climate conducive to learning, an emphasis on basic skills instruction, optimistic teacher expectations of pupil ability, and ongoing assessment of pupil progress.

The implementation phase of the School Improvement Project began in the 1979-1980 school year.[35] It involved ten elementary schools, all of which were selected on a voluntary basis according to the expressed interest of the principal, staff, and parents. At that time, each school was assigned a liaison from the Chancellor's Office. This person would conduct a needs assessment of the school and help the principal form a planning committee that would develop and implement strategies for meeting those needs identified. The school planning committee would be composed of teachers, parents, supervisors, and paraprofessionals. The committee's school improvement plan, which was submitted to the Chancellor's Office, would include objectives, activities, and evaluation procedures focusing on the five factors of school effectiveness referred to in the research. Technical assistance, training, and other support services were provided through the Chancellor's Office. In the 1980-1981 school year, seven of the original ten schools implemented their plans and nine additional schools that had joined the project began developing theirs.

In January of 1980, a similar project was developed by the New York Urban Coalition with the support of Board of Education President Stephen Aiello and the Chancellor. The Local School Development Project, as it was called, initially involved thirty-seven elementary and middle schools throughout the City.[36] The primary goal of the project was to improve academic achievement through the establishment and support of a planning team at the school building site. This team, composed of administrators, staff, parents, and, in the case of some middle schools, students, would develop a comprehensive school plan regarding basic skills, other subject areas, staff development, school climate, and parent participation. A Council on Local School Development was set up by the Urban Coalition to serve as an advisory group to the project and provide an ongoing review of the program. In the 1980-1981 school year, three of the thirty-seven original schools left the program and one new one was added.

Both the School Improvement Project (SIP) and the Local School Development Project (LSDP) emphasized a school-based approach to the improvement of basic instruction. While one was done under the auspices of the Chancellor's Office and the other by an outside group, both had the support of the central school Administration. However, there were subtle differences between the two programs which serve to highlight the major direction in which the new Administration was moving. LSDP was built upon a relationship forged with the local district superintendent; SIP was primarily concerned with designing a strategy around the principal as the key actor. This emphasis on the principal not only grew out of the priorities set down in the Edmonds' research, it reflected a growing body of literature that points to the principal as the key determinant of school performance.[37] While both programs recognized the importance of basic skills acquisition, SIP had a more direct focus, and it was backed up by an emphasis on regular formal evaluations. Finally, while LSDP included both elementary and middle schools, SIP was devoted entirely to the former. This was indicative of the emphasis on early childhood development that was a key ingredient of the initial instructional strategy adopted by the Macchiarola

Administration.

The Administration had signalled the direction in which it was moving early on, when the Chancellor made his first appeal to the City Council in the summer of 1978, requesting that funds be made available for the reduction of class size in the first grade and the implementation of the Transitional Class Program. Both of these programs were illustrative of a set of basic priorities in terms of policy. Both were based upon a significant body of social science research. The literature on class size seemed to be suggesting rather persuasively that such reductions are beneficial with regard to cognitive and affective outcomes in circumstances where certain conditions are met: when children are in their early years, when reductions are substantial (i.e., from 20 to 15, or 15 to 10), when the objective is geared to elementary school reading or mathematics.[38] Thus came the proposal for reduced class size in the first grade and a basic part of the approach that was taken in the Transitional Classes.

The Transitional Class Program was particularly significant. It was a precursor of things to come, setting a foundation for the broader based Promotional Policy and the Administration's effort to raise competency standards. It was designed to address a grievous problem that was far too typical both within New York City and around the country: Children who do poorly in early grades fall further behind as they advance to later grades. Thus, a basic policy statement which introduced the Transitional Class program read as follows:

> Urban school systems throughout the country, including New York City, have traditionally responded to the problem of early academic failure in one of two ways. Pupils are either held over at the same grade level and repeat a year of instruction or they are given a social promotion into the next grade along with some remedial instruction. Experience has demonstrated that many of these pupils do not profit from either

> of these approaches and in fact, continue to fall behind academically.[39]

The Transitional Class Program that began in the fall of 1978 was based upon the premise that pupils who fail to learn basic skills in grades one, two, and three would profit most if placed in a special nongraded, reduced class size environment for a limited period of time from one half to a full year. During the 1978-1979 school year, funds were made available to set up 489 classes for approximately 8000 pupils in 358 schools. As a result of budget cuts imposed during the following year, the program was reduced in 1979-1980 to 391 classes for 7425 pupils in 313 schools. The Chancellor allocated funds among the districts based on the number of pupils that had been held over in the first three grades during the previous June. Citywide guidelines that he established specified that each class should be composed of between 15 to 20 first, second, and third grade pupils who had been held over as a result of falling a year or more below grade level in reading ability. However, up to three potential holdovers could be admitted to a class if there were an insufficient number of holdovers to fill a class. In his articulation of the program principles, method of allocation, and guidelines for implementation, the Chancellor was making his first policy statement on the issue of social promotion and providing an incentive to community superintendents and their school principals to end the practice.

The Administration was committed to make the program a positive experience for children, upgrading both their academic skills and self-concept. Citywide criteria were set for teacher selection that included the following qualifications: demonstrated success in working with slow learners, at least three years' experience in teaching early childhood grades, demonstrated flexibility in classroom management, and a willingness to participate in staff development. Teachers were assigned the responsibility for holding an initial parent orientation meeting and bi-monthly parent-teacher conferences. They were also required to attend special training sessions in diagnostic prescriptive assessment, classroom management systems, and the integration of the reading process in different curriculum areas.

In December of 1980, the Administration completed an evaluation of the program. The report revealed a high incidence of noncompliance with the City-wide standards at the district level. A substantial number of teachers did not have the required years of teaching experience, some ineligible pupils had been placed in the program, instructional techniques had not always conformed to those established, and some school staff members had not been rigorous in the testing of students for the purposes of evaluation.[40] In the final assessment of the program prepared by the Office of Educational Evaluation, pre- and post-test data were available for only 54% of the second and third grade students. This data did show, however, a mean reading gain of one month per month of instruction among second graders, and a mean gain of 1.12 month per month of instruction for third graders. The program was eliminated at the end of the second year because of a loss of City funding. While the test scores were moderately encouraging regarding the efficacy of the remediation, the degree of noncompliance exhibited at the school district level did offer several important, though discouraging lessons. No doubt at least part of the noncompliance could be traced to problems of implementation at the central level. However, the message coming back to the central Administration was quite clear. It said that new standards of competency and performance emerging from the Chancellor's Office could not be set by administrative fiat. The road between a policy decision, and its successful implementation, is a long one;

and it was one which needed to be traveled before a workable Promotional Policy could be put in place.

ROUND ONE: COMPETENCY STANDARDS AS A STATE ISSUE

The campaign to raise competency standards in New York was not launched at the local level. It began as a State issue and, ironically, the Administration at Livingston Street came out on the opposing side. In 1975, the New York State Board of Regents had adopted a policy which would require students graduating from high school in 1979 and thereafter to pass State-developed Basic Competency Tests (BCT) in reading and math before they could qualify for a diploma. A competency test in writing was to be added to these requirements in 1980. These Basic Competency Tests were similar to those that had been developed in many other states and were designed to evaluate a student's coping skills - those skills needed to function as a responsible adult in contemporary society. In academic terms, this meant the measurement of basic literacy skills, or the ability to read, write, and calculate at the eighth grade level.

When the BCT's were first administered in June, 1978, they came under severe criticism from some of the Regents who claimed that the tests were too easy. In July, the Regents instructed the Commissioner of Education to establish tentative standards for new and more difficult tests in reading comprehension, writing, and math. These standards were set tentatively so as to allow for a public statewide review in the form of Regents/Commisioner Regional Conferences. The Regents were scheduled to take a formal vote of approval on March 1st. Under the new standards, the BCT's would continue to apply only to the graduating classes of 1979 and 1980, and new examinations would go into effect in 1981. The Regents Competency Tests (RCT) were designed to change the basic philosophy and purpose of the State competency program. Unlike the BCT which was concerned with measuring basic life skills and functional literacy, the RCT was meant to assess content and academic skills at the high school level. This high-school-level standard is the most distinguishing feature of the RCT, and it is the only test of its kind in the nation that is used for determining eligibility for high school graduation.

Prior to 1978, New York State was responsible for a comprehensive program of competency testing, but the applications of the exams that were in use varied extensively from those of the BCT and the RCT. Most tests were used for broad evaluative purposes. The Pupil Evaluation Program (PEP) in reading and math is administered statewide each year to third and sixth grade pupils in both public and private schools. Those children who score below the established "State Reference Point" on the PEP test become eligible for remedial help. A Preliminary Competency Test (PCT) in reading and writing is used to identify those students who might have trouble passing the minimum competency tests in high school. Regents Examinations are offered in twenty-two subject areas each year for students in grades nine through twelve. These examinations are used as a standard of excellence. Students who pass them and complete appropriate course work are granted the distinction of receiving a Regents High School Diploma. The State also administers a High School Equivalency Examination for individuals who do not finish four years of high school, but who wish to demonstrate proficiency on five general education development tests in order to obtain an equivalency diploma.

It is not difficult to understand the Regents' motivation for implementing a new test that would determine eligibility for a regular high school diploma. Except for Alaska, where the costs of nonacademic support services are unusually high, New York spends more money per child on education than any other state in the nation. The results derived from this level of expenditure had not been commensurate with the cost. There had been widespread public dissatisfaction with the level of competency exhibited by high school graduates, and this dissatisfaction was voiced by political, business and community leaders in all corners of the state. A major force behind the new competency examinations was Dr. Kenneth Clark, the psychologist and educator who had been the only black member of the Board of Regents. Clark was a major historical figure in the Civil Rights movement in the United States. He had served as a key expert witness on behalf of the plaintiff in the famous Brown v. Board of Education Supreme Court case, where he testified with regard to the psychological damage inflicted on black children as a result of segregated schooling. He was a strong believer in the idea that state competency standards were a mechanism for assuring quality education for poor and minority youngsters. Given who he was, Clark brought a lot of credibility to the competency debate on behalf of the tests.

However, the test had its problems and its opponents. New York was proposing to establish the most rigorous standards for high school graduation in the nation. But, no such standards existed in the lower grades. There was great concern regarding the potential outcomes of the tests. Almost immediately after the first battery of BCT's was administered in 1978, the Puerto Rican Legal Defense Fund in New York City filed a complaint with the United States Office for Civil Rights, alleging that the tests have a disparate impact on Hispanic students. Other major opponents who spoke out against the test were the New York State United Teachers and the New York State School Boards Association.

On January 11th, the State Commissioner of Education and the Regents held a public hearing in New York City to discuss the merits of the newly proposed standards. Among the participants at the hearings was City schools Chancellor Frank J. Macchiarola, who used the occasion to join the ranks of those who had come out in opposition to the new standards. He argued:

> I believe that a hasty and ill-considered implementation of what is, potentially, an extremely useful educational strategy, may undermine the very educational process that it seeks to support.[41]

The Chancellor had made it clear that he was not opposed to the new competency requirements in principle. What he objected to was what he perceived to be a sudden imposition on students of new standards that were not consistent with either their present curriculum or any existing State curriculum. He was also concerned that while the State was establishing new standards for graduation, it was not providing any means for remediation for those students who did not pass the proposed examinations. Macchiarola recommended that both the BCT and the RCT testing programs be phased in "to assure that all students have been provided a reasonable opportunity to meet the standards."[42] He urged the Regents to consider a more comprehensive approach that would integrate the issues of competency testing, diploma requirements, and a promotional policy for the elementary grades. He also suggested that local school boards be allowed to grant their own diplomas to students who meet the requirements of a state-endorsed curriculum or program, but do not pass the new examinations.

At the closure of these hearings, the Regents voted to provide one additional offering of the BCT examinations in August of 1979 for those students who had not passed in either January or June. They also decided at that time, however, not to request state funds from the legislature for remedial programs. In the meantime, they proceeded with their plans to approve the more difficult RCT's on March 1st. Soon thereafter, the Chancellor made arrangements to go ahead and develop his own remediation program to help students pass the State examinations. Absent of any funds for the task at hand, the effort was organized on a volunteer basis in cooperation with David Seeley of the Public Education Association and members of the Board of Education's School Volunteers Corps. In all, approximately 4000 volunteers contributed to the "Campaign for Competency." The Chancellor's Office was still predicting, however, that more than 7000 students would not graduate because of their failure to meet the test requirements.

By February, the Chancellor had convinced State Education Commissioner Gordon Ambach to add an amendment to the proposed competency standards that would allow the granting of "certificates of achievement" for those students who did not pass the examinations, but had completed their course work for high school. Under this plan, students would be entitled to a free education to pursue a high school diploma until they reached the age of twenty-one. Macchiarola had enjoyed a good relationship with Ambach, who had a reputation of being a reasonable person and a competent educator. He offered public praise to the Commissioner for his conciliatory action, saying, "The Commissioner appears to be responding to the need to treat children fairly."[43] But not all were in agreement. Regent Kenneth Clark condemned the certificate of competency plan, calling it a "Jim Crow diploma." He added, "We might as well give students certificates for being born."[44] Several of Clark's colleagues on the State Board saw the certificates as a way of undermining what they were trying to accomplish with the new standards. On February 9th, a seven-member Regents Committee on Elementary and Secondary Education directed Commissioner Ambach to revise his proposal and remove the certificate plan.

On February 28th, the day before the Regents were expected to take their final vote, Macchiarola sent a letter to Ambach threatening to ignore the Regents' decision. He said that he would use his own "broad powers" as Chancellor to issue local certificates of achievement rather than deny them to more than 7200 students. Macchiarola argued that any regulation forbidding local districts to avoid certificates was inapplicable in New York City, since State law gives the Chancellor authority to determine all educational policies for the City school district, including the establishment of minimum educational standards. As might be expected, the letter to Ambach did not sway the opinions of the Regents. In fact, it only added to their determination. State Regent Louis Yavner reacted in a punitive tone and scolded the Chancellor publicly, declaring, "New York City must be shamed...It must wear a scarlet letter." [45]

On the first of March, the Regents voted unanimously to approve a new set of regulations that deemed, "New York now has the highest diploma standards for foundation skills in the nation." [46] Under these regulations, students scheduled to graduate in 1981 would be expected to pass the RCT's in reading, writing, and math unless they passed the BCT's before 1979. Students would also be given an option to use scores from the College Entrance Examination or American College Testing Program in order to demonstrate competency. The regulations authorized the use of alternative testing procedures for handicapped and bilingual students. That same day, the Regents voted 9 to 6 to approve the awarding of certificates to special education students with retarded mental development who had passed their individualized education programs (IEPs). Then, after a two-and-one-half hour debate, the Regents voted 10 to 5 against the issuing of certificates of achievement.

During the spring of 1979, the City Board of Education, in cooperation with the Public Education Association, continued its volunteer-based "Campaign for Competency" to help students get through the state examinations. In addition to this effort, the Chancellor put aside $200,000 to set up a tutoring program during the spring recess. When the results of the BCT examination were announced that July, the outcome was not nearly as gloomy as had originally been expected. Of the 42,908 seniors registered in the City's 112 high schools, only 956 were denied graduation because of their poor performance on the BCT's. That summer, 973 students, including juniors and seniors, registered for remedial classes.[47]

The test scores released in July of 1979 only allowed for a brief sigh of relief. As the City school district moved to bring its students to the required competency level, the Regents were taking further measures to enforce their higher standards. On July 27th, the State Board, in a 13 to 1 vote, proposed a new regulation which would place any high school on probation which had a student pass rate of less than 85% in the statewide competency examinations. Such probationary status would jeopardize the authority of a school to grant diplomas and its eligibility for State and Federal funding. What made matters worse, while students entering their senior year in 1980 could still qualify for graduation by passing the BCT's, those eligible for graduation thereafter would be required to take the more difficult RCT's. These newer exams began to be administered to the effected students during the 1979-1980 school year.

In the summer of 1979, the Chancellor assembled a Regents Competency Test Task Force, which was given the assignment to revise the basic high school curriculum so that it was consistent with the standards that had been set in the new State examination. This Task Force of central school personnel would also be responsible for the development of training programs for staff and remedial programs for students. These programs were in place by September. In the meantime, however, the Administration continued its campaign to speak out against the new standards. In an extensive interview with the New York Times that fall, Nathan Quinones, Executive Director of the Division of High Schools, complained:

> We think it terribly unfair to immediately implement a more difficult test when that test has not been validated and when we don't have a clear curriculum to base the test on. These examinations should be phased-in over a period of time.[48]

In January, as the new tests were to be administered for the first time, the Chancellor issued his own public statement. He again made the point that a uniform curriculum should have preceded the establishment of a standard exam - this time comparing the Regents program to his own Promotional Policy which was then in its developmental stage. He explained, "...my model has been reversed...We have been asked to administer tests in the absence of validated standards and a curriculum."[49]

On March 29th, 1980, the Administration, upon the advice of Nathan Quinones, submitted a set of recommendations to the Board of Education regarding new local requirements for the high school diploma.[50] There was nothing in the proposal that would contradict or undermine the State standards. However, the proposal was meant to be consistent with the new Promotional Policy for grades K through 9 that the Chancellor had introduced in November. Moreover, there was an important message to be communicated in the local diploma requirements that were finally adopted in June. It emphasized that while the Administration was supportive of the effort to upgrade basic skills, it would not do so at the expense of a wider variety of programs. Among other things, the regulations included a new foreign language requirement, the establishment of a new global history curriculum, and more "hands on" experience in such areas as shop classes, home economics, and business. The number of credits required for graduation was increased from 38 to 40.

In the summer of 1980, the High School Division began experimenting with a Mastery Learning Program, a technique that was developed by Professor Benjamin Bloom of the University of Chicago. Bloom had been a participant of the original conference held at Sterling Forest by the Macchiarola transition team in May of 1978. His approach asserts that under appropriate instructional conditions, all students can "master" basic subject matter.[51] It includes several major components:

- The formulation of a set of behavioral objectives which all students should achieve
- Frequent formative/diagnostic evaluation
- Corrective or remedial instruction for students who have not achieved their objectives
- A criterion-referenced summative evaluation

These basic tenets of Mastery Learning that were adopted by the High School Division on an experimental basis were consistent with the overall philosophy of the Administration, the variables of success identified in the literature on effective schools, and the effort to raise competency standards.

Throughout the 1980-1981 school year, the High School Division continued, and in fact stepped up its remedial efforts with regard to the RCT's. By then, the Chancellor had restructured his central budget so that local tax levy funds and Federal aid dollars could be channeled into the program. Nevertheless, as the June, 1981 deadline for passage came closer, the anxiety level of both students and staff rose higher. On June 18th, Chancellor Macchiarola sent a twenty-two page letter to Willard A. Genrich, Chancellor of the New York State Board of Regents, once again registering his disagreement with the impending examinations. However, Macchiarola's correspondence was more than a letter of protest. Prepared by his Office of Legal Services, the twenty-two page document read more like a scholarly research brief, outlining the legal issues, the constitutional issues, and the precedent case law. It touched upon all the relevant points of consideration: inadequate notice, test validity and reliability, the absense of a standard core curriculum, the denial of remedial services, and disparate impact. What the letter amounted to was the veiled threat of a law suit against the state.

The results of the Regents Competency Examination were announced during the last week of July. Of the 42,363 seniors who were to have graduated in 1981, only 716 or 1.7% were denied their diplomas because of unsatisfactory performance on the statewide examination. Given the severity of the examination and the dire consequences that had been anticipated, these results were both a surprise and a tribute to all concerned. Perhaps they were also a testimony to the efficacy of the remediation campaign that had been launched, or the good educational judgment of the Regents and State Commissioner who supported the competency program. The outcome of the test results was to make the debate over state competency standards a moot issue in New York.

PROMOTIONAL POLICY: THE INITIAL DESIGN

If there was one thing that the debate over state competency standards accomplished, it gave the Administration at Livingston Street a clear sense of how it wanted to design its own Promotional Policy for the elementary and middle grades. The draft policy document that was made public in November of 1979 was based upon the initial recommendations of a Task Force on Graduation Requirements, Promotion Policies, and Minimum Competencies which had worked under the direction of Ron Edmonds for one year. The proposed Promotional Policy was composed of five major parts:

1. A Citywide Standard Curriculum
2. A Testing Program
3. Clearly Defined Promotional Standards
4. Promotional Gates
5. A Remediation Program [52]

A proposed citywide standard curriculum, which was introduced the same week as the draft policy document, was an integral part of Promotional Policy. These "Minumum Teaching Essentials," as they were called, were designed to "ensure that all students receive sequentially planned instruction enabling them to acquire mastery of basic skills for each grade." [53] If the policy were successful, it could be expected that children at specific grade levels throughout the City would have been given a basic body of instruction within a similar time frame so as to allow for a minimum level of proficiency in reading, writing, and mathematics. Districts, however, were encouraged to "enrich" these minimum essentials with their own materials, "provided that assurances are given that the basic curriculum requirements are met." The purpose behind this curriculum was to establish minimum teaching standards for staff as a first step towards minimum competency standards for students. Thus, the citywide curriculum was scheduled for implementation one year before the competency promotional standards. The content of this kindergarten through grade nine sequence was designed to be consistent with the high school curriculum being prepared to satisfy the instructional needs dictated by the Regents Competency Examinations.

The draft Promotional Policy called for the use of criterion-reference tests in reading, writing, and mathematics to be administered as an aid to determine grade placement beginning in 1982. These tests were to measure student achievement in accordance with the prescribed citywide standard curriculum so that students are evaluated on the basis of those materials which they are taught. Up until this time, the annual citywide examination given to comply with the State Decentralization Law had been "norm-referenced" in nature. Norm-referenced exams evaluate students in the context of a broader group, i.e., a national "norm" or grade level. The criterion-referenced test called for under Promotional Policy would evaluate students according to a specified criteria of proficiency, i.e., an absolute score. In the spring of 1980, the Board of Education began experimenting in three school community districts (Districts 8, 16, 24) with a State-developed instrument called the Degree of Reading Power test (DRP). The DRP was a criterion-referenced test that could also be used for diagnostic purposes and instructional planning.[54] The Chancellor had hoped to adopt this examination on a Citywide basis after one or two years of experimentation. In the meantime, the Administration's plan was to use the norm-referenced instrument on a temporary basis. This allowed for the continued use of an examination that was believed to be consistent with the Citywide curriculum. It also facilitated year-to-year comparisons on a Citywide basis.

The heart of the Chancellor's proposed policy was the promulgation of promotional standards. Here both the policy and the purpose were quite clear:

> Student promotion will be determined by the degree to which the student has mastered the basic skills required in each grade. Automatic advancement from grade to grade without evidence of achieving required performance standards in basic skills places an unfair burden on students in succeeding grades. The early mastery of basic skills will help ensure that today's elementary school student is not tomorrow's high school dropout. [55]

Once again, the Administration was making a connection between competency standards in the earlier grades and those being imposed at the high school level - portraying the former as a logical foundation for the latter. However, except for those grades governed by the promotional gates (4 and 8), the Administration left some discretion at the district level regarding the interpretation and enforcement of the broad policy that it set. Instead of mandating, it recommended specific guidelines for promotion that were consistent with the criteria set at the promotional gates. These included:

- Satisfactory completion of academic areas of study
- Achievement of a standardized reading score of not more than one (in grades 2, 3, 5, 6) or one-and-one-half (in grades 7 and 8) years below grade level; after 1982, norm-referenced tests were to be replaced by criterion-referenced tests in all basic skills
- Achievement of required performance standards on basic skills criterion-referenced tests
- Satisfactory attendance, behavior, and punctuality

The proposed promotional gates to be established in grades four and eight were designed to serve as checkpoints, and the criteria for promotion set here were rigid. Achievement of a standardized reading score of one year below grade level in the fourth grade or one-and-one-half years below grade level in the eighth grade would mean denial of promotion. A math score of two years below grade level at either of the gates meant the same. These norm-referenced standards would be replaced by criterion-referenced standards in

1982. Grade four was selected as a gate because relevant education literature seemed to suggest that the sequence from reading readiness to reading comprehension should be achieved at that point. Grade eight was selected because it is, for most students, the last year before high school. The Administration went to great lengths to demonstrate that it was not treating retention lightly. The proposed policy statement read as follows:

> The retention of a student is a most serious step which, if improperly handled, can have a severe negative effect on the student. Emphasis on student retention should be in the elementary grades...The purpose of retention is to ensure that students so retained are provided opportunities for success through programs designed for their needs and capacities.[56]

All students not meeting the standards in the gate grades would be provided with remedial instruction similar in form to that which was given in the transitional classes. A special summer program would be made available to eighth graders to give them the opportunity to advance to high school before September. Fourth grade holdovers would be given remediation in the following school year. The Administration was careful not to set up gates or "mandate" retention in any grades where it would be unable to provide remediation. In fact, the original policy statement specified quite clearly that the establishment of the gates was contingent on the availability of resources to support the cost of remedial programs.

The draft Promotional Policy allowed for certain exceptions with regard to special education and bilingual students. In select cases, alternative testing methods would be made available to handicapped children, and, in a limited number of cases, special education students would be exempt from participation if deemed necessary by the child's individualized education program. Students enrolled in bilingual education programs for less than four years and found to be of limited English proficiency, would be tested in both English and their native language, the proportion being determined by the number of years a student was in a bilingual program. Those students in bilingual programs for more than four years or found proficient in English would take the exam in English.

A hidden issue behind the Promotional Policy concept was that of staff accountability. Ron Edmonds, its chief architect, had seen a long-term potential in the policy for use as a means of staff evaluation. This was not a part of the original policy design because it was not a major purpose of the concept. Moreover, the Administration did not want to make Promotional Policy a union issue. It wanted to put the policy in place with teacher support. But the potential use was there and it was obvious. As Edmonds explained:

> The other side of it all is that the program will allow us to evaluate teachers and principals. We will find teachers and principals that are not performing. You know what I mean - if teachers and principals working within the same socio-economic environments are having more trouble getting their kids through the gates, it tells us more about the professionals than about the kids. That is the genius of the program. The policy is now being offered with an emphasis on the child, but I see it as a basis of professional accountability. I have avoided the latter issue in our past discourse because I don't want to complicate matters. I don't want to fight that battle now, but that is the obvious question that must come about.[57]

The Administration extended itself to cover all its bases in the design of Promotional Policy so it had a program that was workable. It would implement a standard curriculum before imposing competency standards. It would try to assure that the instructional materials used were consistent with the test content. It was committed to providing remediation for those children held over in the gate grades. The policy would be phased-in gradually, and those handicapped or bilingual children who could not be expected to perform at the desired level of proficiency would be given special consideration. Promotional Policy design was one of the most self-conscious and deliberate efforts for which the Administration was responsible.

The Chancellor did not want to be susceptible to the same kind of criticism which he himself had so forcefully directed at the State. However, to some measure, the issues were not the same. From a legal perspective, the courts had applied the due process clause as a test to the legality of imposing competency standards for high school graduation because they had deemed the diploma a property right. No diplomas were at stake under the Administration policy, and there had been no firm legal precedent on the issue of grade-to-grade advancement. Instructionally, the appropriate phase-in period for a policy governing fourth or eighth grade advancement could not be expected to be as long as one related to a twelfth-year diploma. Moreover, by the time Promotional Policy was proposed, competency testing had already been in practice under State law. Thus, one of the strongest arguments on behalf of a Promotional Policy for the lower grades was the existence of State competency standards for high school graduation. If implemented effectively, Promotional Policy would help prepare children for high school. Despite the care that went into the policy design, there were still critics outside the Administration who would not accept it. Some would reject competency testing as a legitimate concept; others had problems with the way the Administration would put its policy into practice. Thus, Promotional Policy became a highly charged educational and political issue in New York City.

ROUND TWO: COMPETENCY STANDARDS AS A LOCAL ISSUE

The Chancellor had made a commitment to implementing a Promotional Policy from the beginning of his tenure. The forces behind the demand for higher competency standards in the City were as strong as those which existed at the State level. Among the major advocates was Mayor Edward Koch, who had taken to frequent expressions of outrage with regard to the poor performance levels of children within the public school system. The first set of city-wide reading scores to be announced by the Macchiarola Administration appeared in March of 1979. The scores were based on the California Achievement Test that had been taken by pupils in grades two through nine in the previous March, four months prior to the time the new Administration formally took office. The results showed that 43% of the pupils who took the exam scored at or above grade level on a national scale. To make matters worse, there was a discernible pattern which showed that the longer a child stayed in school, the farther below grade level he or she fell. Ron Edmonds referred to this pattern as the "accumulated academic deficits of inferior instruction."[59] A Daily News editorial aptly described the overall test results as a "Sorry Showing" for New York.[60] The outcome contributed to a heightened criticism of the City's public schools and added to the outrage of the Mayor.

The tests taken by City school children in March of 1979 were scored within two months. Because local law requires that the purchase of such commercial instruments be put up for competitive bidding, a different test was administered this year from the one given previously. When the scores for the Metropolitan Achievement Test (MAT) were reported, they showed erratic results. There were very great gains in some grades and significant losses in others. On May 14th, Macchiarola ordered that the test scores be withheld pending an investigation with regard to their validity.[61] He directed that decisions on student promotion should be made primarily according to teacher judgment and classroom performance. He said that payment would be withheld from the Psychological Corporation from which the examinations had been purchased. Within two weeks, the Chancellor announced that the tests had been found to be invalid.[62] He ordered that a new test be administered on June 6th, and deemed that the instrument to be used would be the California Achievement Test. The decision caused some dissention among personnel in the community school districts who were not pleased with the prospect of administering another exam and were not accustomed to such strong direction from the central office. One Community School Board in Manhattan (District 3) refused to administer the test and sought a court injunction against it. Macchiarola got the injunction overturned by a State Appellate Division Court, used his powers under the decentralization law to superoede the Community School Board, and sent in his own trustees to administer the new exam on the date that had originally been set.

Outside the validity issue, using the California Achievement Test once more for the citywide evaluation carried another distinct advantage, comparability. Longitudinal analysis of system-wide progress is not possible unless the same instrument is used consistently over time. However, the need to disqualify the previous examination struck a severe blow to the credibility of standardized tests in general. It raised some significant questions regarding their application in making educational decisions about individual children, and added fuel to the ongoing campaign against competency testing. The results of the test, announced in June, showed that only 40.3% of the city school children in elementary and middle schools were reading at or above grade level. This was even less than the 43% rate recorded in the previous year.[63]

On October 30th, the Public Education Association hosted a "Convocation for Competence" in Manhattan. Among the honored guests was Mayor Edward Koch, who called for a crackdown which would flunk students who can't read and end social promotion. That same week, Charlotte Frank, Executive Director of Curriculum and Instruction for the New York City Public Schools, announced the scheduling of a conference for community school district and high school superintendents. The purpose of the conference, to be held on November 13th, was to introduce the newly proposed citywide standard curriculum for kindergarten through grade nine. Each district was invited to send six representatives. It was urged that the individuals chosen be "key people" who played an instructional leadership role in the district.[64] Present at the conference were the Chancellor, who described the intent of the new curriculum; Ron Edmonds, who explained its relationship to Promotional Policy; and State Regent Louise Matteoni, who discussed its implications regarding the State competency program. The afternoon would be devoted to workshops, run by the Division of Curriculum and Instruction, that would focus on the design and the content of the new Citywide curriculum.

On November 7th, the Chancellor made public the draft document of his proposed Promotional Policy. This document for general review would be the subject of public hearings to be held by the Board of Education on December 6th. It was expected that the Board would approve some form of this proposal by the end of the school year. Promotional Policy was put forward by the Chancellor, under the authority granted to him by the Decentralization Law, to promulgate minimum educational standards and curriculum requirements for all schools throughout the City school district. As the press release which accompanied the nine-page document stated, this had been the first time that a New York City Chancellor had exercised this responsibility in such a way.[65] Chancellor Irving Anker had prepared a draft promotional standards document at the end of his tenure, but in anticipation of his departure, the Board of Education decided to table it and await the selection of a new Chancellor.

Promotional Policy would be a first in terms of the community school district-central administration relationship. However, it was part of a distinct pattern of governance that had been emerging under Macchiarola's leadership. This Chancellor would use his authority to the fullest to implement those policies in which he believed. Macchiarola had made a philosophical commitment to focus on the elementary grades, and that meant a series of centrally administered initiatives in the school districts. From a managerial perspective, a priority in the high schools would have been easier, since the Executive Director of that division is appointed by, and reports to, the Chancellor. However, the Administration chose to move ahead with such efforts as reduced class sizes in the first grade, Transitional Classes, the all-day kindergarten, the School Improvement Project, and now, Promotional Policy. The district reaction to Promotional Policy was mixed at first. Some Community School Board members and Superintendents saw it as an infringement on their own perogatives, others were supportive, but most greeted the new policy with a sincere skepticism as to its feasibility. Livingston Street in their eyes was the "land of the can't be done." Why would things be different now? Was this a serious effort at educational reform? Or was it a political maneuver carried out at the behest of the Mayor? Did the Administration really know what it was doing? Was it committed to doing things right?

Alfred Melov, who was a Community Superintendent in Brooklyn and the president of the citywide association of Community Superintendents, explained the general district reaction as follows:

> When Promotional Policy was proposed, I didn't look upon it seriously. It looked like pie in the sky. I didn't expect them to get the funds for it...
>
> The initial reaction of the Superintendents was pro. They agreed philosophically. Many believed, however, that money was the key...
>
> A strong Chancellor would have moved in this direction years ago. We needed minimum standards. There had been an abdication of leadership by the Chancellor. The Superintendents were forced to build their own policies. It caused inequity and a lack of continuity in the City...
>
> Once you give up that power, however, its hard to get it back. Superintendents are suspicious of the Central Board of Education and are extremely jealous of their own perogatives.[66]

Philip Kaplan, President of a Community School Board in Brooklyn and also head of the New York City Community School Boards Association, offered another cynical view:

> I am not a supporter of Promotional Policy... I could be convinced.
>
> I agree with the principle of Promotional Policy. You have to stop promoting kids who can't read... But there are problems with the program. It hasn't been packaged together yet. They don't have the money. What programs do we have to cut to do this?[67]

The district reaction to Promotional Policy was very telling. Superintendents and school board members did not respond to it purely as an issue of control. What they seemed to be telling the Administration was, "If you're going to assume authority over educational policy, first show us what you can do with it." They had seen competency tests imposed at the high school level, without the resources available for support services. They were fearful that the same scenario would be played out in the districts with Promotional

Policy. The major concern on everyone's mind was remediation. The Administration had stated in its draft policy document that retention would not be mandated for any child if funds were not provided for remediation. But most people in the districts were not convinced that the political forces behind Promotional Policy would allow the Administration to abide by that pledge.

There was also opposition to Promotional Policy on philosophical grounds. Among the strongest of these opponents was Meryl Schwartz, vice-president of the United Parents' Associations (UPA). Schwartz had no confidence in competency tests as an instrument for evaluating pupil performance. She and her organization took the position that a policy requiring children to be held over was punitive and unfair. They demanded that measures be taken against unsatisfactory teachers instead of against pupils who were the victims of ineffective instruction. Schwartz would remain one of the most outspoken critics of Promotional Policy in the City and her group would be joined by others such as Advocates for Children. These were formidable opponents and their viewpoint had to be taken seriously. They were not the enemies of public education; they were not among those who had given up on the school system. They represented a significant part of the educational establishment in New York.

These influential groups, however, were not representative of the entire clientele of the City school system. There was considerable support for Promotional Policy within the black community whose children made up a significant majority of the student population. This support was reflected among the Community Superintendents. Thus, Al Melov explains, "Minority Superintendents are supportive. It's the white middle class liberals that are opponents."[68] Influential members of the black community had also been supportive of competency standards at the State level. That previous spring

(1979), the Reverend Carl E. Flemister, executive director of the American Baptist Churches of Metropolitan New York, had made a public appeal for a greater emphasis on basic skills in public education. His organization had endorsed the Regents' program that had been advocated by Dr. Kenneth Clark, although it urged that remediation must be a key component of the competency program. Like Clark, the ministers saw competency standards as a means towards quality education for black children. Minority parents also seemed supportive of tougher standards generally, and Promotional Policy in particular. Anthony Alvarado, Community Superintendent of District 4 in East Harlem, points out that such support seems to be consistent with a more general outlook assumed among the less advantaged:

> Most lower-middle- and lower-class parents are hard-nosed. They say that if a student doesn't do well, he should be left back. Therefore, minority parents support Promotional Policy.[69]

Meryl Schwartz of the UPA, however, offered a more cynical view of minority support for the new policy:

> Supposedly minority parents love it. They are the most vulnerable people. We (the schools) never did anything for them anyway. Minority parents have faith in test scores because they don't have confidence in teacher judgment.[70]

The Board of Education held its public hearings regarding the adoption of the proposed Promotional Policy on the sixth of December. The hearings got considerable attention in the local press. Several days before they were held, the Daily News announced that the Board of Education would be meeting to hear testimony on "one of the most revolutionary proposals it has offered in some time."[71] The turnout was so large that it was necessary for the Board to schedule an additional day of hearings. Representatives of more than a half dozen local Community School Boards offered formal testimony. Most agreed with the policy in principle, although many asked for more discretion at the district level, and nearly all were concerned about the availability of funds for remedial programs. Alfred Melov, speaking on behalf of the citywide association of Community Superintendents, complimented the Chancellor for "seeking to establish curriculum standards for achievement,"[72] but raised a number of questions considering the implementation of the new policy:

- Should it be done when funding is problematic and unsure?
- Are the gates at the appropriate grades? Why not three and seven instead of four and eight?
- Will there be adequate planning at the school level for pupils who don't pass the gates?
- Will there be changes in the use of Title I and state aid to allow for more effective use to help marginal learners?
- Will there be effective overall planning and development regarding curriculum standards and the tests?

Melov closed his testimony with a statement that fairly well described the sentiments of the Superintendents he was representing, "In summary, we look with favor upon the broad base draft, but we in the field take the position of the natives of Missouri, 'We have to be shown.'"[73]

Meryl Schwartz spoke on behalf of the United Parents' Associations. She began her presentation with a discussion of her philosophical disagreements with the policy of retention and the burden it places on pupils rather than on personnel. She criticized the Administration for not consulting more with parents in the original design of the program. Then she read off her organization's own list of practical questions with regard to the implementation of the program. Among these were:

1. What support services will be provided for holdovers?
2. Should the gates be established if dollar resources and supports are not in hand?

3. What tests will be used until criterion-referenced tests are developed and validated? Is it valid to use norm-referenced tests to hold students over?

4. Can youngsters be held over repeatedly? If so, is that acceptable?

5. Are the fourth and eighth grades appropriate for the gates?

6. Will all holdover classes be organized for fewer than 20? 25?[74]

Carla Precht of Advocates for Children began her testimony by saying that her organization supported Promotional Policy in principle, but presented a litany of questions and concerns that were similar to those which came from Meryl Schwartz. The Coalition of Organizations and Advocates for Children With Handicaps, representing twenty-two separate organizations, expressed general disagreement with the policy, and particular concern with the provisions governing special education students. Several groups representing different sectors of the non-English dominant community in the City attended the hearings and, while offering general support of the principles behind the Promotional Policy, were fearful of the impact it would have on bilingual students. Addressing the issue in a more critical tone, the Puerto Rican Educators Association castigated the plan which it claimed punishes students, but does not hold staff accountable.

Those individuals and organizations who came to the hearings to offer support for the proposed Promotional Policy carried the weight of some rather influential sectors of the New York community. They included David Seeley of the Public Education Association, and Lloyd Cooke of the Economic Development Council of New York City. But perhaps the most important remarks were those carried by Sandra Feldman of the United Federation of Teachers who exclaimed, "We've come to praise you, not to bury you." The UFT agreed with the basic philosophy and purpose of Promotional Policy. It was intimately involved in its actual design. If implemented according to its original plan, the proposal would also result in more jobs for teachers. While UFT support for the program would not guarantee its passage, strong opposition from the union would have severely weakened its chances.

The Council of Supervisory Associations (CSA), which represents supervisory personnel within the school system, was more guarded in its support than was the teachers' union. That organization's spokesperson at the hearings expressed a concern with the "logistics" of implementation. However, the fact of the matter was that there was a real split within the CSA. High School principals were generally in favor of promotional policy because it raised the hope that students they received from the lower grades would be better prepared. Middle school principals were lukewarm at best, because there was an implication in the policy which suggested that the Administration might be moving towards a kindergarten through eighth grade organization that would eliminate the middle schools. Elementary school principals were downright skeptical because it was they who would have to deal with the holdovers and whatever hardships that produced. Thus, CSA President Ted Elsberg explains:

> We are for standards. We support it. We are concerned with the implementation. High School principals are 100% for Promotional Policy. Elementary and junior high school principals are against it. Elementary school principals are most concerned with implementation. They have doubts about the funds for remedial programs. Many of them think that this is being done just because it looks good. [75]

As the public hearings came to a close, the Administration drew near unanimous praise from the local media concerning the proposal it had put forward and the goals it had set out to accomplish. A Daily News editorial entitled "Strong Medicine" cited Promotional Policy as an end to the "anything goes era of public education." [76] A New York Times editorial entitled "An End to Social Promotions" described the previous practice as a "mixture of kindness and defeatism ." It noted that "Mr. Macchiarola can't yet answer all the doubts," but pointed out in the terms of the Administration's philosophy:

> There is some evidence, in any case, that most effective schools in poor neighborhoods are those that set high academic standards and keep evaluating their pupils' progress. The Chancellor's new promotional policy is an encouraging step in that direction.[77]

Despite the good press, there was still a great deal of work to be done. Many professionals within the system who accepted the policy in principle, had little faith in the Administration's ability to carry through on what it had said it would do. There were questions about the details. There was widespread skepticism that the Mayor and the City would not provide the necessary funds for remedial programs, and even its most ardent advocates believed that Promotional Policy could not be put forward effectively without the funds. Six months would pass before the Board of Education reached a final resolution on the Chancellor's proposal. Board approval was expected. In the meantime, however, the Administration "took to the streets." Macchiarola and Edmonds began meeting with PTA's, good government groups, Community School Boards, and all others concerned in order to build confidence in the Administration's program and make those kinds of revisions that would render it workable. Edmonds put together an advisory group of seven Superintendents and concentrated on hammering out some of the details on implementation.

The Board of Education took its final vote on Promotional Policy at the same June meeting in which it approved the new local requirements for the high school diploma. As expected, it approved an amended version of the draft proposal that had been submitted by the Chancellor in November of 1979. Most of those revisions within the policy document were ones that had been recommended by the Administration in response to the consultations it had held with a large variety of groups over the previous six months.[78] Among these was a change in the later gate grade from eight to seven. This was done in order to allow for remediation before a child entered a terminal grade. However, in changing this gate grade, the Administration also stiffened the promotional standard. It required that any student one year below grade level in reading (instead of the original 1 1/2) would be held over.

The Administration also changed the policy with regard to bilingual students. It held that any student within a bilingual program for less than four years would be required to take standard examinations in reading and math in "English as a Second Language." The previous proposal would have allowed such students to take the examination in both English and their native language, the proportion being determined by the amount of time spent in the bilingual program. In making this change, the Administration was emphasizing the "transitional" rather than the "maintenance" goals of the bilingual program. In making his recommendations for revisions to the Board, the Chancellor also built in a new appeals procedure for parents who might feel that the holdover of their child is not justifiable or in line with the new regulation. This procedure would go from the school level, to the Community Superintendent, to the Community School Board, and finally to the Chancellor.

The Board of Education approved all the revisions that the Administration recommended in the final Promotional Policy document. However, it also made one change that the Administration had not recommended. That change was the removal of the all-important funding contingency. This reversal not only took the Chancellor's Office by surprise, it went against everything which the Administration had promised in its campaign to win support for the policy. As

Ron Edmonds explained it:

> I had said that Promotional Policy would not go ahead without the funding for the remedial program. That was my public position. That was Frank's (Macchiarola) position. The Board of Education decided to delete the funding piece on the day that they adopted the policy. They passed that resolution at the suggestion of (Board Member) Amelia Ashe. I was damned surprised. They said that they thought the policy was wise and sound. They believed that it was so important that they would go ahead no matter what. It made Frank and me look like liers. We had said publicly that we would not go ahead without money.[79]

In removing the funding contingency, the Board members informed the Chancellor that they were not going to attach educational standards to money. In Ashe's words, they instructed him to "make every effort, absolutely every effort, to make sure it gets funded and implemented."[80] However, by removing the funding contingency, the Board actually weakened the chances that the policy would get funded. They weakened the incentive for the Mayor. They got the politicians off the hook. The Board gave them a policy at no cost. In so doing, the Board weakened support for the policy in the field - among the superintendents, among the principals, and among the teachers. Promotional Policy was adopted as everyone feared it would be, without the proper supports. But everyone also knew that no matter what the Board or the Chancellor adopted at the policy level, it was what happened in the field that would determine whether or not it all would really occur. If lack of funds didn't kill the program, lack of cooperation at the district and school levels could.

ROUND THREE: FROM ADOPTION TO IMPLEMENTATION

As the Administration approached the beginning of the 1980-1981 school year, the tasks before it were quite clear. First of all, it had to prove to the people in the field that despite the removal of the funding contingency, it had every intention of implementing Promotional Policy according to the original design. Thus, the summer of 1980 was devoted to those kinds of planning activities meant to translate the initial policy concept into a set of workable programs. Secondly, it had to convince people in the field that although the Board of Education was prepared to move ahead without it, funding for Promotional Policy was forthcoming. This would not be easily accomplished, since the Administration had suffered a loss of credibility as a result of the Board's last-minute decision. Finally, and most importantly, the Chancellor had to actually produce the funds that were needed from the Mayor and the local legislature. However, since those municipal officials had already gotten what they wanted from the Board of Education, the Chancellor was in a rather weak bargaining position.

All the signs coming from Livingston Street seemed to indicate that Promotional Policy was moving ahead without any ambivalence or ambiguity. The Board of Education had given final approval to the citywide standard curriculum in June. In September, the Division of Curriculum and Instruction began to work with the districts to identify exemplary instructional programs that could be used as models for the remedial programs necessitated by Promotional Policy. While the Administration was preparing to undertake its remediation effort for the gate grades, it wanted to encourage the districts to cooperate in developing their own programs for the remaining grades. The announcement of a 6.4% improvement in the citywide reading scores that September, was certainly expected to put the Chancellor in a stronger position in his attempt to negotiate the money that was needed to put his remedial programs in place. Moreover, these scores, which showed that 53.3% of the children in grades two through nine were still reading below grade level, served to emphasize once more that some immediate actions had to be taken in order to raise the competency levels in the City schools.

When the Chancellor submitted his budget message to the Board of Education on December 15th, the $63 million figure he attached to Promotional Policy was based on an estimate that 43,000 students would be held over; 17,000 from the fourth grade, and 26,000 from the seventh grade.[81] Approximately $39 million of the total would be used to hire 1539 teachers for remedial classes, and $2.1 million would be for teacher training. A central staff of 38 people was expected to cost $1.5 million, and contractual fringe benefits were projected to cost $17.5 million. The remaining money would be allocated for test development and the purchasing of materials. The Administration was planning to divert $29 million of its federal and state reimbursible funds into its remediation. This left $34 million that it was requesting from the City.

On December 22nd, Ron Edmonds distributed a preliminary draft of the Chancellor's rules, regulations, and programs for the implementation of Promotional Policy. The draft was sent to all Community School Board Presidents and Superintendents "to give you some sense of our work thus far, but primarily so that you may know the instructional programs we are recommending for your consideration."[82] The Superintendents were asked to react to the programs and provide alternatives to those with which they disagreed. However, the preamble of the document stated the basic policy directive in no uncertain terms, "The Administration remains committed to the basic educability of all the children we serve."[83] In accordance with this, the document explained the Administration has adopted a uniform curriculum, committed itself to a citywide testing program based on the curriculum, and instituted a variety of school improvement projects. It explained further that Promotional Policy "obtains to each grade in the basic skills areas" and is not confined to grades four and seven. It noted that the significance of grades four and seven "derives only from the Central Administration's monitoring of promotion practices of those grades and centrally supportive services for students who fail those grades." [84] In closing, the draft regulations declared, "We fully anticipate that all districts will enforce this policy at each grade and will appropriately respond to students making inadequate progress at any grade." [85]

The Administration was doing all it could to convince the district people that Promotional Policy was a reality with which they would have to deal. However, its campaign to develop credibility in its new programs was still an uphill battle. The financial plan announced by the Mayor in January carried an endorsement of the Chancellor's Promotional Policy, but stated clearly that funds were not yet available for remediation. This announcement only added to the skepticism of those who were undecided and fueled the efforts of those who were opposed. Thus, the latter launched a last-ditch effort, aided by the uncertainty of the Mayor and the vulnerability of the Chancellor, to persuade the Board of Education and the Administration to postpone the implementation of Promotional Policy to a later date.

In February of 1980, the Chancellor appointed Thomas Minter as Deputy Chancellor for Instruction to succeed Ron Edmonds, who was returning to the university. Changing the top instructional position in the Administration from the Senior Assistant title, which Edmonds held, to that of Deputy Chancellor; the one that was given to Minter, symbolized the differing needs and expectations that the Chancellor was articulating with regard to these two individuals. Edmonds, who had been recruited from the university, served as a senior policy advisor. He was a thinker whose job it was to design the overall instructional agenda of the Administration. Minter was recruited from the Federal bureaucracy, having served as Assistant Secretary of Education in charge of elementary and secondary programs. He would serve more as a line administrator who was responsible for the implementation and administration of instructional programs. In that same month, the Chancellor appointed Alfred Melov to serve as Assistant Superintendent in charge of Promotional Policy. Melov would report to Minter and assume responsibility for the development and operation of the final implementation plan for Promotional Policy. His appointment was a key one, for the Superintendents had a great number of concerns with regard to the Chancellor's programs, and their support was crucial to its success. Melov, who had been elected President of the citywide association of Superintendents, and had previously been their spokesperson on Promotional Policy, could assure that their concerns were built into the final implementation plan, and thereby help gain their support.

On February 18th, the Chancellor distributed to the Superintendents another draft of guidelines for the implementation of Promotional Policy. This revised draft reconfirmed the policy goals defined in the document circulated by Ron Edmonds in December, and outlined the responsibilities that would be given over to the Superintendents. These responsibilities included such areas as the identification of students likely to fall below required performance standards, the selection of viable remediation programs, the selection of qualified teachers for remediation, the development of communications with parents, and the selection of appropriate testing and evaluation instruments so that student progress could be measured regularly throughout the school year.[86] From February to October of 1981, the Division of Curriculum and Instruction conducted curriculum workshops designed to help teachers share effective programs for the application of the Minimum Teaching Essentials, the basic document which composed the citywide standard curriculum. On March 12th, the Chancellor held a citywide conference for Superintendents at Glen Cove, New York. While Promotional Policy was not the only topic on the agenda, it certainly was the most significant and time-consuming one. During the course of the three-day conference, the Chancellor and his top-level staff, including Minter and Melov, explained the rationale of the programs behind Promotional Policy and responded to questions concerning its practical operation and long-term implications.

On March 24th, Budget Director Dall Forsythe received a note from Richard Frankan, Deputy Assistant Director of the City Office of Management and Budget. The note stated that OMB was in the process of formulating its final recommendations to the Mayor on the Board of Education's 1982 budget request. It explained further,"...before OMB completes its evaluation of the Chancellor's new Promotional Policy, several outstanding questions need to be resolved." The cover note was then followed by six pages of questions which, it was later learned, were prepared with the assistance of the United Parents Associations, the leading opponent of Promotional Policy in the City. The questions covered the following broad topics:

- What average salary figure for teachers was used in the cost projection?

- What functions will central support staff perform? At what rates will they be compensated?

- How were cost figures arrived at for the teacher training program?

- What relationship is there between grade equivalent test scores and the ability to master the curriculum at a given level?

- How will one measure the relative benefits/injury to youngsters from inclusion in holdover classes?

- How will errors of measurement be accounted for?

- Will all districts apply discretion to the standards in a uniform way?

- Can the new promotional standards be postponed until a more adequate measuring device for identifying holdovers is developed?

- How will student progress be evaluated?

- How long will students be retained in holdover classes if they fail to meet required standards?

- In what ways will the promotional policy curriculum differ from prior or existing programs?

- Will this policy force teachers to "teach to the test"?

- How will the standards be applied to bilingual and special education students? What recourse will parents have?

- From what reimbursible programs will funds be drawn?

- How will funds be allocated to the districts?

- What qualifications will there be for participating teachers?

- If the funds requested are not allocated, are there alternative plans for a program of smaller size and scope?

The nature of the questions appearing in the OMB communication were indicative of the serious doubts many had regarding the preparedness of the Administration for implementing its policy. In addition to the philosophical differences which many of its opponents had, there began to grow fears about what Promotional Policy would render. People would talk in a half-joking way about those "bearded fourth graders" who could not get past the gates. Others would wonder if the new policy would give rise to a new population of dropouts who, discouraged by failure at a young age, would never get to high school. The OMB correspondence made it clear to school officials that support for Promotional Policy was far from assured. It also carried the message that negotiations with municipal officials would go beyond the subject of dollars and would concern the details of pedagogical issues, policies, and practice.

On March 31st, Macchiarola announced that he would be holding five borough-wide meetings for Community Superintendents and principals in order to discuss

Promotional Policy. These meetings would be held between April 28th and June 5th, and would be attended by all the Chancellor's top-level staff. The meetings were reminiscent of the citywide meeting of principals held the year before in order to mobilize support for the school budget. This year, the Chancellor was reaching out to the principals on a borough-wide basis in a more intimate setting, in order to respond to their concerns about Promotional Policy and to assure them that he would get financial backing for it. It appeared that the more doubtful City financing of the remedial programs became, the more determined grew the Chancellor. There were some members of the Administration who started to wonder if it might be better to put the whole matter off for another year. But Macchiarola knew that this was an election year. If funding could not be gotten now, it would not be gotten at all. As Melov explained the Chancellor's position, "Frank said, 'NO BACKING OFF!' "[87]

The citywide reading test was administered to students in grades two through nine on April 6th. As in the previous year, the instrument used was the California Achievement Test, a norm-referenced exam. On April 10th, nearly three weeks after the initial inquiry, Dall Forsythe issued a "preliminary response" to the questions he had received from the Mayor's Office concerning Promotional Policy. The response was thirteen pages in length and addressed all the issues that appeared in the initial OMB inquiry. On April 14th, the Chancellor issued to the field the final set of guidelines for the implementation of Promotional Policy. This final document was a revised form of the two previous drafts that had been circulated, incorporating the concerns that had been registered by various district personnel and, at the same time, clarifying the responsibilities for which Superintendents would be held accountable.

On the day after he distributed the final policy guidelines, Macchiarola received a three-page letter from Deputy Mayor Robert F. Wagner Jr. advising him that there had been "considerable internal discussion at City Hall" regarding the proposed Promotional Policy and its accompanying budget request. Wagner was suggesting a face-to-face meeting to discuss "the issues that have surfaced as being the most problematic." He assured the Chancellor, "I am in sympathy with the basic concept of Promotional Policy and the purpose of the meeting, in my view, will be for me to get a more precise understanding of recent developments." The developments Wagner wanted to discuss were those concerning cost projections, the availability of other-than-City-tax-levy funds, and implementation strategies. Wagner also listed a host of specific issues which he wanted Macchiarola to address, and these were not very different from the ones included in the original OMB inquiry to Forsythe. Wagner closed his letter in a conciliatory and supportive tone, writing:

> Once again let me emphasize that I ask these questions in a constructive spirit and with the hope that a Promotional Policy is effectively implemented in the City.[88]

It would take several weeks before the meeting between Macchiarola and Wagner came to pass, and the outcome of that meeting would determine the future of Promotional Policy. In the meantime, Forsythe began to meet with OMB staff in order to take a second look at the original cost projections submitted by the Board of Education. The first round of negotiations that took place resulted in a new and lower projection for the cost of remediation programs, taking it from the initial $63 million total down to a $42 million total. This projection was arrived at in three ways:

- A revised teacher salary estimate from a $20,000 per year average to a $17,000 per year average salary

- A revised child count; the initial projection assumed that all children who were absent from the exam would fail, and that all children with limited English proficiency would also fail. The new projection assumes that half the absentees will fail, and that children of limited English proficiency, taking the exam in English as a second language, would have the same pass rate as other children. The new child count also factored in enrollment declines that were not considered in the first estimate.

- Both of the above factors reflect a change in mathematical assumptions, and perhaps can also be explained as part of the usual kind of dollar "padding" that is found during the initial phases of the budget process. However, the third factor contributing to the downward decline of the cost projection constituted an amendment to the actual policy standards that were set by the Chancellor and the Board of Education. It called for a revised standard of promotion that changed the seventh grade holdover criteria from one year below grade level in reading to one-and-one-half years below grade level. This new standard would undoubtedly reduce the size of the seventh grade holdover class and the cost of its remediation. It represented a rather significant level of influence in instructional policy from budget officials in the Mayor's Office. These amendments notwithstanding, it was still not determined how much, if any, of the total cost package would be paid for by the City.

Macchiarola continued his borough meetings with the principals. On April 27th, he held a general conference for the members of the thirty-two community school boards around the City. The conference, which was held at the City University Graduate Center, was arranged by Philip Kaplan, President of the Community School Board Association. Kaplan had not been a supporter of Promotional Policy, but was willing to give it a hearing. By then, it was apparent that the Community School Board members had more reservations about Promotional Policy than their Superintendents. The Superintendents had seen themselves as implementors of policy. If packaged well, the Chancellor's plan could clarify policy among the districts and make their jobs easier. However, the Board members had for ten years played a rather singular role in instructional policy making in their districts, and the Chancellor's initiatives would compromise that role. Macchiarola understood the concerns of the local school board members and enjoyed a good rapport, for he had been one of them once, having served as a member and President of a school board in Brooklyn. He and his team were joined in their presentations by Board of Education President Joseph Barkan. The presentations focused on three general topics: the policy directive, the implementation plan, and the budget. Macchiarola used the occasion to present the revised $42 million budget and to explain how it was calculated.

Three days after the school board conference, the executive board of the New York City Elementary School Principals Association voted to reject Promotional Policy as it was currently written. On May 1st, they issued a press release which alleged:

> It is our considered opinion that this (policy) document reflects political concerns and not the educational needs of the children of New York City.[89]

The press release was handed to Macchiarola personally on the same day as he entered Forest Hills High School to begin one of his borough-wide meetings with the district principals. The outlook was clear. The negotiation of the budget for remedial programs made Promotional Policy seem more political than ever. The Principals who once were skeptical were now angry. First they were told Promotional Policy would not go ahead without funding. Then the Board changed that. Afterwards, they were told that the money for remediation would be sought after. Then, as the budget process was about to reach a climax, they were told that they would not need as much as was originally expected. Macchiarola was trying to maintain credibility in his new Promotional Policy, but he wasn't getting much help either from the Board of Education or City Hall, both of whom wanted him to put the program in place.

The Mayor was scheduled to submit his Executive Budget on May 12th. Macchiarola and Wagner scheduled their meeting for the first week of the month. It was meant to be cordial. The two men liked each other personally; they worked well together. Wagner was a strong advocate of public education, a believer in the Chancellor, and a supporter of Promotional Policy. But the money was still doubtful. The two decided to meet at Macchiarola's home in Brooklyn. It would be relaxed and friendly. However, Macchiarola had already made an important personal and professional decision before the meeting had begun. He had been the key force behind the design and adoption of Promotional Policy. He did not want to see it implemented without the necessary financing for the proper remedial programs. He did not want to be responsible for raising competency standards in a manner which he had found so wanting at the State level. So, after a number of serious discussions with his family, close friends, and staff, Macchiarola had decided that he would leave the position of Chancellor if the City did not allocate the funding for the program. That decision was never made public, but it set the tone of the meeting between him and Wagner.

Macchiarola's departure would not have come at an opportune time. The Mayor was in the midst of a reelection campaign, and the Chancellor's record played a key part in that campaign. When the Mayor's budget was announced on May 12th, the figure for Promotional Policy was still under consideration.

However, in the final deliberations, the total cost for Promotional Policy was put at $36 million; $11.4 million would come from the City.

EDUCATIONAL OUTCOMES: MOST CHILDREN DID LEARN

The citywide reading scores were announced on May 28th. Of course, the big news of the year was the fact that New York City school children in grades two through nine had moved above the national average for the first time in a decade, with 50.7% reading at or above grade level. It was a 4% increase over the 1980 scores, and a 10.4% improvement over 1979.[90] (See Illustration III-1.) The results of the Math scores announced that same day were not as positive, but were better than had been expected. The scores on the Stanford Diagnostic Math Test showed that 49.6% of the students in grades two through nine were either at or above grade level. More than 50% of the students in grades two through six were at or above grade level, while less than 40% of those in grades seven through nine were at grade level. (See Illustration III-2.) This test was the first step in the development of a customized instrument based on the specific math curriculum taught in the schools. Since the Promotional Policy guidelines did not prescribe a math standard until 1982, this test would not be used to determine advancement at the gates until then. Given the newness of the instrument, no year-to-year comparisons were possible in math.

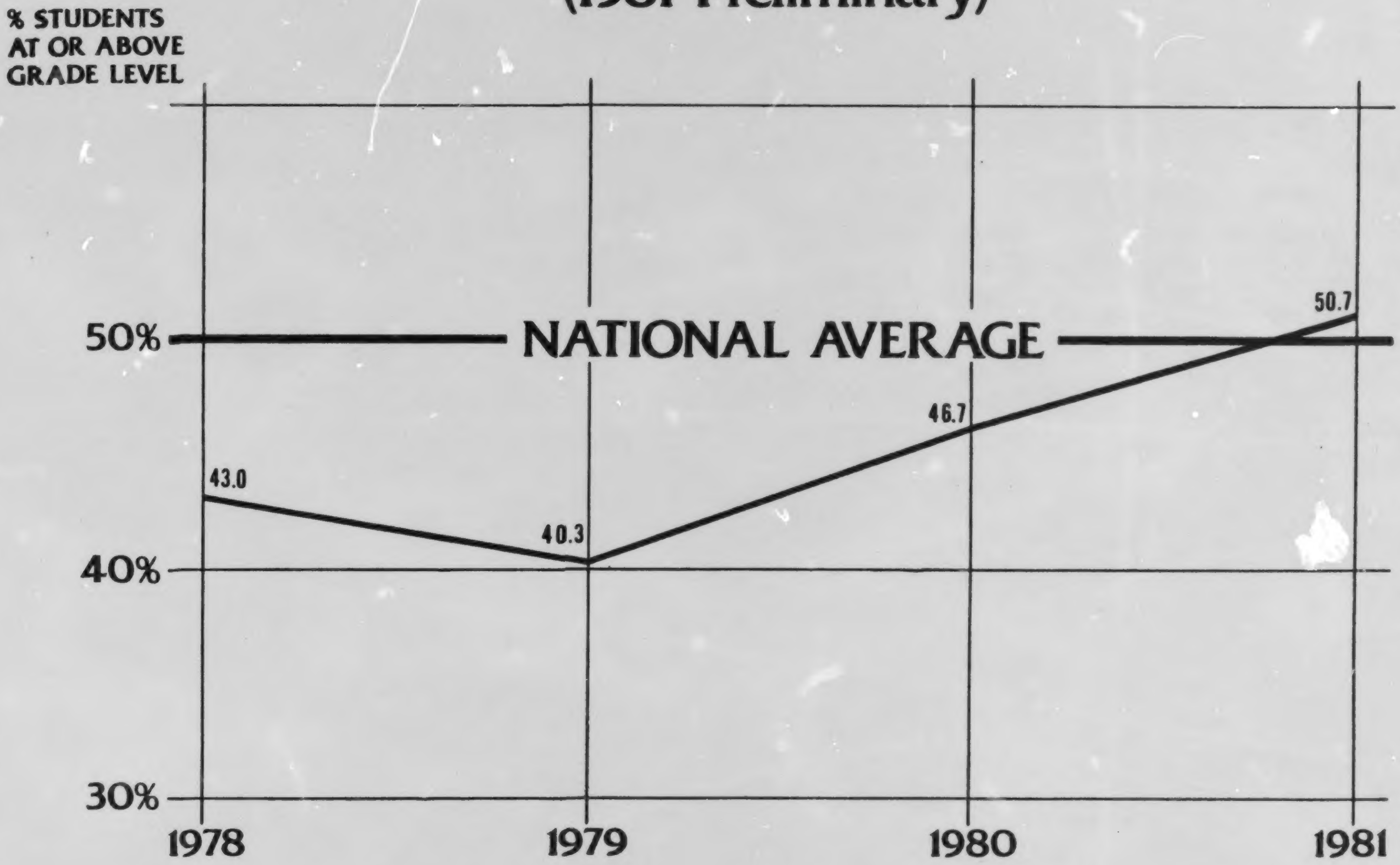
The reading improvement over the previous year was reflected in all of the City's thirty-two school districts. However, as might be expected, there was a wide range in the achievement levels of middle-class school districts and those with predominantly poor populations. Thus, the highest scoring district (District 26), found in Douglaston Queens, a rather affluent neighborhood on the New York City-Nassau County border, had 83.6% of its students reading at or above grade level. The lowest scoring district (District 9), located in the impoverished South Bronx, was reported to have 30.6% of its students reading at or above grade level. However, there was also another distinct pattern which showed that the most significant year-to-year improvements took place in the low-achieving districts located in predominantly poor areas. Thus, the largest district-wide improvement in the reading scores (8.8%) for 1981 were in District 4 in East Harlem. This pattern becomes even more pronounced when one reviews reading score improvements over a two-year period between 1979 and 1981. (See Illustration III-3.) There is reflected an 18.7% improvement in East Harlem (District 4), 12.8% in Central Harlem (District 5), 13% in Williamsburg-Greenpoint (District 14), 15.8% in Ocean Hill-Brownsville (District 23), 13.9% in Queens Village-Hollis-Springfield Gardens (District 29), and 12.5% in Bushwick (District 32).

The overall results of the 1981 reading scores served as a harsh reminder of the kinds of obstacles which children from disadvantaged backgrounds must overcome in order to reach acceptable levels of proficiency in the basic skill areas. However, the test scores also demonstrated that, given the right motivation, expectations, and instruction, it is possible to upgrade the achievement levels of all children, regardless of social condition. District 4 in East Harlem is a significant case in point. Led by Anthony Alvarado, a strong Superintendent who instituted a promotional policy at the district level a year prior to the Chancellor's centrally administered effort, it enjoyed the highest increase in reading scores of any district in the City. There was also other encouraging evidence emerging which suggested that intervention at the school site, if properly planned and administered, could be effective in upgrading the basic skills of City public school children. This was borne out by data

READING ACHIEVEMENT OF STUDENTS IN N.Y.C. PUBLIC SCHOOLS, GRADES 2-9*

1978-1981

(1981 Preliminary)



* STUDENTS WITH LIMITED ENGLISH PROFICIENCY WHO DID NOT TAKE THE TEST ARE INCLUDED IN THESE RESULTS AS READING BELOW GRADE LEVEL.

Source: Board of Education, City of New York, Division of Public Affairs, May 28, 1981.

ILLUSTRATION III-1

ILLUSTRATION III-2

District Percent of Students At and Above Grade Level in Mathematics*

1981

District	2	3	4	5	6	7	8	9	Total
1	40.4	54.2	35.9	43.2	42.9	23.4	26.7	16.4	35.1
2	64.6	72.6	69.8	70.3	67.6	58.9	54.3	39.9	63.4
3	44.2	52.9	40.6	43.9	44.0	29.5	29.5	15.5	39.0
4	45.5	49.6	39.7	36.0	40.3	24.9	23.7	9.4	33.8
5	42.2	49.2	38.7	48.1	42.9	27.8	24.2	15.3	37.0
6	35.6	47.5	36.0	45.0	36.2	23.6	22.5	13.8	34.3
7	37.6	47.5	39.2	39.5	33.5	24.6	20.8	34.7	34.2
8	42.5	56.0	50.7	43.8	42.2	25.8	26.5	15.9	38.6
9	39.0	47.2	34.1	30.6	26.8	20.5	21.8	13.1	31.3
10	47.9	52.7	41.4	44.0	43.3	27.8	26.6	16.8	39.1
11	57.4	65.9	58.1	59.0	58.7	41.0	39.9	21.2	51.5
12	43.1	54.9	37.1	45.8	34.6	16.2	17.2	8.0	36.9
13	50.9	61.9	47.8	45.7	52.3	27.9	26.4	6.7	43.5
14	50.2	62.8	59.5	57.7	52.3	28.2	37.7	21.4	48.9
15	50.3	62.6	54.1	53.7	49.0	26.2	32.2	17.1	48.1
16	46.0	59.0	48.3	45.2	51.5	19.3	17.7	4.1	40.4
17	42.8	50.2	48.4	45.6	37.4	22.3	20.8	60.9	38.7
18	66.3	69.5	63.6	62.3	61.5	40.7	37.3	26.8	52.7
19	43.7	52.5	42.8	42.3	43.9	31.1	31.0	28.4	40.9
20	60.7	71.2	64.2	65.0	62.0	45.5	48.6	33.6	56.4
21	59.8	68.5	60.2	62.6	61.4	49.8	49.8	34.7	56.8
22	64.9	72.4	67.2	69.7	65.8	59.4	57.0	38.6	63.7
23	34.8	44.3	45.6	39.9	35.4	17.2	16.4	45.2	33.4
32	44.3	49.5	41.9	38.6	40.5	30.0	27.7	16.5	38.3
24	56.9	69.3	60.3	61.9	56.9	49.0	52.0	38.3	56.3
25	77.1	85.5	80.3	79.9	81.0	71.8	67.9	50.7	74.2
26	81.8	90.9	84.9	88.2	84.7	76.3	68.8	57.9	79.2
27	57.4	64.4	58.2	60.9	56.8	44.0	44.5	32.7	54.3
28	52.7	67.8	57.5	59.0	62.3	49.6	45.3	32.5	54.1
29	67.0	67.0	59.0	65.6	57.1	39.1	40.9	37.3	55.9
30	64.6	73.1	64.2	64.8	59.4	44.9	49.0	37.4	58.5
31	74.0	84.1	78.0	77.5	70.2	63.5	65.1	31.9	72.2
33**				70.0	55.3	64.0			60.2
City	53.4	62.5	54.6	55.5	52.6	38.9	38.8	29.5	49.6

*Includes students excused from testing because of limited English proficiency

**Experimental Intermediate School

Source: Board of Education, City of New York, Division of Public Affairs, May 28, 1981.

ILLUSTRATION III-3

District Percent of Students Reading At and Above Grade Level* 1981 and Comparison of District Totals 1979-1980-1981

	Grades								Preliminary 1981	1980	1979
District	2	3	4	5	6	7	8	9	Total	Total	Total
1	34.1	43.1	34.1	45.8	43.1	33.2	36.6	34.4	37.9	32.8	25.8
2	51.4	50.4	55.9	63.2	61.1	64.5	60.5	52.1	56.2	54.8	50.5
3	33.9	38.8	35.8	46.6	46.6	43.8	40.0	33.3	40.6	37.1	——
4	48.2	45.7	41.6	47.5	52.1	42.8	37.4	40.8	44.4	35.6	25.7
5	36.1	37.2	34.3	47.3	45.7	46.9	41.9	39.1	41.8	35.3	29.0
6	28.6	30.5	29.4	40.1	35.0	30.3	32.4	30.3	32.3	29.2	24.7
7	30.3	30.6	32.5	38.7	30.9	31.6	29.3	61.6	32.7	28.9	22.0
8	43.4	43.3	41.3	45.6	41.4	42.6	42.0	39.3	42.6	37.8	32.1
9	30.9	30.5	28.1	32.1	29.9	30.4	33.8	26.9	30.6	27.8	22.3
10	36.7	37.7	34.4	40.0	40.1	39.1	39.8	39.5	38.5	34.9	30.4
11	54.3	55.5	55.2	64.9	62.6	60.9	55.7	47.2	57.6	54.1	47.3
12	35.4	39.7	32.2	45.0	36.8	31.6	28.4	33.7	36.2	30.9	25.2
13	48.6	51.2	41.8	48.1	51.4	46.0	42.4	23.0	46.0	41.0	29.8
14	43.1	44.8	46.7	45.2	39.6	34.3	39.0	35.5	41.5	36.3	28.5
15	47.1	47.9	43.9	50.5	46.5	39.9	39.0	32.3	45.1	40.5	35.5
16	39.5	42.9	43.9	45.5	51.8	32.1	30.8	22.8	40.5	39.1	29.6
17	46.0	49.3	47.5	50.2	43.3	36.7	38.2	94.2***	45.2	41.3	34.0
18	69.0	63.9	65.3	67.1	64.7	55.7	57.8	56.3	62.2	59.1	51.0
19	36.5	39.5	34.7	42.0	40.3	38.8	37.8	47.1	38.7	34.0	27.9
20	59.2	62.8	57.9	62.9	59.6	55.6	57.7	57.7	59.0	55.5	48.9
21	51.0	57.4	53.6	60.9	62.5	58.2	61.7	62.8	58.7	55.0	48.3
22	62.6	64.5	64.1	68.3	66.6	71.0	69.8	64.8	66.5	62.8	56.6
23	29.7	31.3	35.1	41.4	37.9	35.7	40.3	90.3***	36.2	29.5	20.4
24	47.6	52.3	53.1	57.3	54.9	56.5	57.7	54.1	54.3	51.5	47.4
25	66.2	73.7	70.8	73.7	74.2	75.8	72.7	70.0	72.3	69.4	64.3
26	77.8	82.7	82.5	87.8	84.3	87.4	82.0	82.3	83.6	77.8	71.9
27	52.8	52.7	52.5	60.6	57.8	54.3	53.9	53.1	55.0	52.4	43.6
28	50.6	56.0	51.5	61.2	62.3	60.4	55.2	51.6	56.4	51.9	47.4
29	67.4	62.6	60.3	66.4	59.2	54.3	55.9	65.4	60.9	55.6	47.0
30	63.5	61.4	53.7	63.0	55.4	55.5	58.8	60.5	58.9	54.7	47.9
31	71.7	75.5	77.2	78.0	70.5	77.2	75.6	62.7	74.9	70.3	64.2
32	38.4	35.0	33.4	36.1	40.1	36.7	38.3	34.6	36.9	30.0	24.4
33**				80.0	68.1	80.4			74.0	65.4	——
City	48.5	50.4	48.6	54.7	52.1	50.3	50.0	50.5	50.7	46.7	40.3

* Includes students excused from testing because of limited English proficiency

** Experimental intermediate school

*** Based on 31 students in that grade in District 23 and 242 students in that grade in District 17

Source: Board of Education, City of New York, Division of Public Affairs, May 28, 1981, September 2, 1980 from both the School Improvement Project and the Local School Development Project.

All but one of the schools participating in the School Improvement Project (SIP) showed gains in the percentage of students reading at or above grade level between 1980 and 1981. The gains ranged from 0.8% to 11.8%. The seven schools in SIP for two years showed an average gain of 7.2% between 1980 and 1981. The nine new schools had an average gain of 4.6%. The average gain for all sixteen schools was 5.8%. The average citywide gain was 4%. Gains for the two-year schools in SIP between 1979 and 1980 averaged 8.4%, as opposed to the citywide average of 6.4%. The two-year gain was 15.4%, as opposed to the citywide gain of 10.4%.[91]

The data for the Local School Development Program (LSDP) schools was almost as encouraging. Of the thirty-two schools participating in LSDP, twenty-six showed gains in the percentage of students reading at or above grade level between 1980 and 1981. Four schools showed declines, and two alternative schools did not administer the exams. The average gain for all LSDP schools was 5.2%. The gains for the improving schools ranged from 0.7% to 20.6%. Between 1979 and 1980, LSDP showed an average gain of 9.1% of students reading at or above grade level, as compared to a 6.4% gain citywide. The two-year gain for LSDP schools between 1979 and 1981 was 14.0%, as compared to 10.4% citywide.[92]

When the final analysis of the citywide reading scores was completed, it was found that 23,509 students would be held over at the gates. This total included 10,023 fourth graders and 13,486 seventh graders.[93] The number was considerably less than the 40,000 failures that had originally been predicted. Once the individual norm-referenced scores from the California Achievement Test were computed, an effort was made to perform a criterion-referenced analysis of the exam in order to make it instructionally useful for the remedial effort that was planned. The practice drew criticism from some outsiders who felt that the citywide test was being inappropriately used for too many purposes. [94] However, the launching of the Administration's summer remedial program received a large amount of coverage and praise from the local media who heralded the end to social promotions in the public schools. Those acclaims included an editorial in the Amsterdam News, the City's largest black newspaper, which endorsed the Chancellor's Promotional Policy, but issued a caveat that there should also be more evaluations of teachers. [95]

In June, approximately four hundred veteran teachers were hired and trained for participation in the six-week remedial program for holdovers. While the original Promotional Policy plan only required that such a summer program be offered to seventh-grade holdovers, the 1981 summer program was made available to all students (in grades 4 and 7) who had failed to make it through the gates. In addition to the centrally administered remedial effort, ten Community School Districts initiated supplementary programs of their own. [96] A total of 9495 students participated in the Administration's summer program, which ran from July 6th to August 14th. On the last day, all students who had not passed through the gates in June, including those who did not participate in the remediation, were given an opportunity to retake the test. A total of 15,917 students sat for the exam. Of this number, 5999 achieved satisfactory scores and were passed through the gates. This represented a 37.7% passing rate. A remaining 17,510 would be held over in the fall. [97] On September 2nd, the central Division of Curriculum and Instruction began a two-week training program for approximately 1500 teachers and 200 supervisors who would participate in the promotional gate remediation program during the forthcoming school year.

In October, the Board of Education's Office of Educational Evaluation completed an assessment of the summer remedial program.[98] The evaluation showed that there was a direct relationship between the number of days in attendance in the summer program and the rate of promotion. It found that 41.4% of the fourth graders and 44.5% of the seventh graders who regularly attended (24 out of 30 days) the Chancellor's six-week program met the criteria for promotion in August. It also found that 40.3% of the fourth graders and 41.7% of the seventh graders who regularly attended district summer school programs were promoted. These data can be compared to a passing rate of 30% of fourth graders and 42.5% of seventh graders who received private tutoring during the summer. Only 9.6% of the fourth graders and 13.8% of the seventh graders who received no instruction over the summer passed the August examination.[99]

The outcome of the six-week summer program provided a great deal of credibility to the efficacy of remediation. As the Chancellor observed:

> This gives us a good indication of what can be accomplished in the regular school year program. If students attend school regularly and if instruction is conducted with the same degree of purposefulness and enthusiasm as it was in the summer, we will be able to significantly raise the level of achievement of our lowest achieving students.[100]

The August results also pointed to the potential and serious problems that would need to be faced in the forthcoming school year. The fact of the matter is that only 67.7% of all the June **holdovers** even bothered to take the August exam, and of that amount, only 37.7% managed to pass. (See Illustration III-4.) This points to a population which can be expected to have more difficulty in getting through the gates. It may mean that the children with the most serious learning problems had not yet been dealt with in terms of remediation. The Administration

ILLUSTRATION III-4

August, 1981 California Achievement Test Results
for Holdovers in Grades Four and Seven, by School District

District	Number of Holdovers, June 1981[a]	Number and Percent of Holdovers Tested, August 1981		Number and Percent of Holdovers Promoted, August 1981[b]		Percent of Re-tested Holdovers who were Promoted, August 1981[c]
		N	%	N	%	%
1	580	411	70.9	126	21.7	30.7
2	359	213	59.3	106	29.5	49.8
3	494	381	77.1	154	31.2	40.4
4	648	255	39.4	119	18.4	46.7
5	606	367	60.6	126	20.8	34.3
6	669	604	90.3	223	33.3	36.9
7	938	603	64.3	194	20.7	32.2
8	1079	768	71.2	327	30.3	42.6
9	1598	905	56.6	314	19.7	34.7
10	1699	1066	62.7	352	20.7	33.0
11	591	451	76.3	213	36.0	47.2
12	751	483	64.3	151	20.1	31.3
13	830	480	57.8	195	23.5	40.6
14	853	560	65.7	159	18.6	28.4
15	878	653	74.4	220	25.1	33.7
16	582	357	61.3	107	18.4	30.0
17	1284	833	64.9	267	20.8	32.1
18	445	309	69.4	124	27.9	40.1
19	1217	998	82.0	291	23.9	29.2
20	612	371	60.6	139	22.7	37.5
21	545	418	76.7	168	30.8	40.2
22	461	342	74.2	158	34.3	46.2
23	751	465	61.9	176	23.4	37.9
24	569	476	83.7	221	38.8	46.4
25	209	148	70.8	80	38.3	54.1
26	73	57	78.1	36	49.3	63.2
27	1050	775	73.8	342	32.6	44.1
28	514	401	78.0	151	29.4	37.7
29	673	495	73.6	241	35.8	48.7
30	564	344	61.0	152	27.0	44.2
31	548	414	75.6	213	38.9	51.5
32	839	514	61.3	154	18.4	30.0
Citywide	23,509	15,917	67.7%	5,999	25.5%	37.7%

[a] Students were designated "holdovers" if they scored below 6.2 (grade equivalent) in seventh grade or below 3.7 (grade equivalent) in fourth grade on the April, 1981 CAT. The figures in column one were supplied by the Office of Promotional Policy; all other figures were derived from August, 1981 test documents.

[b] These numbers and percentages pertain to students promoted from among all holdover students, even those who did not re-take the CAT in August, 1981. Therefore, 25.5 percent of students who did not meet the promotional standard in April were able to meet it in August.

[c] These numbers and percentages pertain to students promoted from among those holdover students who re-took the CAT in August. Therefore, 37.7 percent of students who re-took the CAT met the promotional standard in August.

Source: Office of Educational Evaluation, New York City Public Schools, "The Promotional Gates Program: An Analysis of Summer School Participation and August, 1981 Test Scores," October 5, 1981.

acknowledged those potential difficulties, but refused to fall back into a mentality of despair. As the 1981-1982 school year began, it was involved in a continued search for effective methods of dealing with those children exhibiting the most serious learning problems. Charlotte Frank, Executive Director of the Division of Curriculum and Instruction, explained:

> With regard to the pupils being held over more than once, we are thinking about alternative designs. We must work with the kids who have not advanced. To the extent that we narrow the pool, we will continue to refine our approaches. It's our job to find a way to make these kids learn.[101]

At about the same time the Administration was reviewing the data from its summer program for the elementary and middle grades, another report emerged concerning the high schools. The first part of the report concerned the Scholastic Aptitude Test scores, which had been regularly declining in New York City and the nation since 1968. It showed that the mean math score for New York City students rose 12 points between 1980 and 1981, and the mean verbal score rose 7 points during the same period. This was compared to mean gains in New York State for both public and private schools (excluding New York City public schools) of 3 points on the verbal test, and 6 points on the math. On a national scale, the SAT scores exhibited no gains. The report also showed that the number of Regents diplomas awarded in New York City, which is a sign of distinction among high schools, rose from 12,760 to 13,519 between 1980 and 1981. Finally, and perhaps most significantly, while the State standard for graduation was changed by replacing the original Basic Competency Test with the more difficult Regents Competency Test, the percentage of seniors granted diplomas in New York City increased from 85.2% in 1979, to 85.6% in 1980, to 85.8% in 1981.

SUMMARY COMMENTS

This chapter is a case study in educational policy making. More specifically, it is an analysis of the attempt by the schools Chancellor to change the policy on competency standards that had been in place for more than a decade, and replace it with a policy which was consistent with his own educational philosophy. That philosophy itself was an innovation because it ran contrary to the way of thinking that was common within the City school system, not to mention a large part of the educational profession. That philosophy was provocative because it raised the standard of performance for both students and staff. It constituted a rejection of the kind of negativism that contributed to the idea that certain children are uneducable.

The new philosophy articulated at Livingston Street was designed to significantly alter the way things were done within the school system. This change was particularly evident as the Administration began to address the needs of those children with the most severe learning problems, who had fallen below the standards of proficiency. These were the hard-core failures. These were the students who could not be promoted. These were the ones who some would have counted among the "uneducable." The Administration responded to these children on several levels. First, it sought to demonstrate that these children were the exception rather than the rule. Indeed, the important message to be transmitted was that inner-city children are educable. However, it also had to be recognized that only by identifying those children with severe learning problems could their needs be dealt with effectively. Once this identification took place, it would be the responsibility of educational professionals to discover how to proceed instructionally and programmatically, but expectations were to remain high. Whether the Administration and the school system can respond to this ambitious calling will be determined over a longer period of time.

The debate over competency standards in New York demonstrates that there is a long distance to be traveled between policy design and implementation. The former is essentially a planning process, the latter is more concerned with securing cooperation and compliance. Both processes represent important aspects of the policy making, but successful implementation usually demands the involvement of more parties. Therefore, it is in the implementation phase of policy making where it is most possible for things to go wrong.

The participants in the competency standard debate in New York were both numerous and diverse. It involved, first of all, the Board of Regents, who established their own state standards. These Regents standards had a direct impact on high school students in the City and set the context for a Promotional Policy in the earlier grades. It involved the Chancellor, who opposed the Regents standards, and sought to put in place his own policy. It involved field personnel within the school system - including community superintendents and school board members who were ambivalent about the Chancellor's proposal, and building principals, some of whom were downright opposed to it. It involved the Mayor and the Board of Education, who were troubled by the poor competency levels of the City's public school students, adamant about raising the standards, but only moderately supportive on the funding issue. Ironically, from the Chancellor's perspective, the public postures of the Mayor and the Board of Education became an obstacle to his winning support and credibility for Promotional Policy among district field personnel.

There were also considerable differences about the merits of the Chancellor's Promotional Policy among the clientele groups of the school system. Blacks and other minorities appeared to be supportive of it. Many of the more established middle-class educational interest groups were opposed. Both factions argued their cases on very solid grounds. The debate among these groups once again highlights the significance of the constituent-client distinction in a school system composed of a predominantly minority clientele. This is not to say that the more established educational interest groups in the City are separate and apart from the clientele of the system, but the case in this chapter certainly raises the question as to whether these influential groups are representative of a majority of the school clientele.

There is as much respectable social science research which speaks against the use of competency exams for the purpose of determining promotion as there is which supports it. This, at least in part, explains the level of controversy which the issue provokes and the number of perspectives it entertains. One might say that in going about the task of developing his Promotional Policy, the Chancellor had much evidence, opinion and allies from which to choose. Once he decided upon the direction he wanted to move, he chose from among those which were most appropriate to the fulfillment of his educational goals. In the end, however, the final determination of competency standards for school children in New York City was the product of the conflict and compromise worked out among the many actors that participated in the policy debate. Notwithstanding all the discussion that took place among professional educators and their clients concerning policy design, it was the OMB budget analysts who eventually had the final word on the standards.

There remains no consensus within the education profession concerning either the efficacy or fairness of competency testing. Many of those who oppose it are still sensitive to a malevolent history in American schooling wherein tests were used as an instrument for the denial of educational opportunity to certain groups. Some of the most enthusiastic supporters of competency testing perceive it as a means of linking educational quality to human equality. The fact remains, however, that there is no established relationship between competency testing and student achievement.

The history of the competency movement has taught us that once a decision to utilize testing as a basis for graduation or promotion has been made, there are certain guidelines to be followed to increase the probability for a desirable outcome. For example, competency tests should be based on a standard curriculum that is taught to all students. Newly developed standards should be implemented on a gradual basis, and the instruments used should be free of cultural biases. It is equally important to assure that any competency-based policy is supported by the availability of an effective remedial program for those children who cannot achieve the standard. This case illustrates an inherent danger in the competency movement which suggests that some of the most vehement political supporters of higher standards are sometimes insensitive to the need for support services, or reluctant to provide the resources required for their establishment.

There is a singularly important lesson to be drawn from our experience with the competency movement which is positive in nature. It proposes that there is a relationship between adult expectations and student achievement. This was borne out by student responses in New York to both the graduation standards set by the Regents and the promotional standards set by the

Chancellor. Such policies will produce the most successful results when they are reflected in the attitudes of classroom teachers. While such policies do not guarantee positive attitudes, they are a first and important step to be taken by educational leaders in the development of an effective approach to meaningful instruction. The denial of educational opportunity to certain population groups cannot be separated from the pathetic attitudes and beliefs that have pervaded the educational profession for nearly two decades. The most apparent victims of these phenomena have been minorities and the poor. Among the most severely affected are children with handicapping conditions.

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CHAPTER FOUR

EDUCATING THE HANDICAPPED

While significant strides were made during the nineteen sixties regarding educational equality for racial minorities, it was not until the next decade when such progress was realized on behalf of children with handicapping conditions. These parallel movements in the advancement of human rights faced many similar obstacles - judicial and legislative battles, a lack of concensus on goals and techniques, a concern for the costs and affordability of compensatory programs. No group was more severely victimized by unfair testing and tracking practices than were the handicapped. For these children, the label "uneducable" was more than a prevailing public attitude; in many instances, it was an explicit public policy. Surely there was a substantial amount of overlap between these two disadvantaged populations. A large proportion of those children who suffered from discrimination, segregation, and the denial of educational opportunities because of a handicapping condition or designation, were drawn from the ranks of racial minorities and the poor.

This chapter concerns an attempt by the Administration in the New York City public schools to comply with a federal court order enforcing the Education for All Handicapped Children Act of 1975. Thus, it will allow us to analyze the local impact of both a legislative mandate and judicial intervention. The case serves to illustrate once more the variety of cross pressures to which an urban superintendent is subjected. It will document the manner in which such conflicting demands inhibit the capability of a local school system to adequately respond to the needs of its clientele. Moreover, given the nature and scope of the mandate imposed, the issue at hand demonstrates, more than any other faced by the Administration, the organizational and managerial consequences that can follow changes in instructional policy.

The passage of the Education for All Handicapped Children Act (Public Law 94-142) in 1975 came after a long and trying period of legislative and judicial debate.[1] First, there was an incremental process of sensitizing federal programs enacted on behalf of the poor to the newly recognized needs of the handicapped. Thus, between 1965 and 1969, the Elementary and Secondary Education Act was amended five times in order to guarantee funds at both the state and local level to support programs to benefit handicapped children. In 1968, Congress mandated that at least ten percent of each state allotment of funds under the Vocational Education Act would be earmarked for programs specifically designed for handicapped persons. That same year, the Handicapped Children's Early Education Assistance Act established experimental preschool and early education programs for the handicapped to serve as models for the state and local levels. While the channeling of resources through several federal mechanisms in the sixties was helpful in overcoming the adverse conditions of the handicapped, it was apparent that much more needed to be done. Many handicapped children were still being denied the right to an education, and many of those receiving education were being placed in programs that were either not responsive or counterproductive to their needs.

By 1968, research in the field of special education began to focus more on quality issues. A significant article written by Lloyd M. Dunn attracted much attention to the fact that schools too often assigned labels to students and altered their educational status without conducting appropriate evaluations.[2] The fact that a disproportionate number of those separated from the mainstream were racial minorities gave rise to suspicions of what many social scientists would call "second generation" segregation.[3] Additional research and writing would argue that the classification of children by categorical labels of handicapping condition produces adverse psychological and behavioral effects.[4] Thus, three major and often conflicting problems seemed to be emergent in the field. First, there was a need to provide educational opportunities to handicapped children who had been unfairly denied access to the schools. Secondly, there was the problem of those children who had been placed in special education programs but didn't belong there. Third, and most complex, was the development or identification of those kinds of programs which were most responsive to the individual needs of that large and diverse population of children who required special education services.

Many students of the subject agree that the most significant early advances on behalf of the handicapped occurred in the area of litigation rather than legislation.[5] The Hobson v. Hansen[6] decision against tracking in 1967 laid the legal groundwork for subsequent cases that would deal more specifically with the handicapped. Three years later, in Diana v. State Board of Education,[7] the parents of nine Mexican-American school children in California brought a successful class action suit into federal court which alleged that they had been inappropriately placed in classes for the educable mentally retarded (EMR) because of the use of culturally biased I.Q. tests. They produced evidence which showed that while 13% of the children in the entire school population were Spanish surnamed, 26% of the children segregated into EMR classes were of Hispanic ethnicity. The Court ordered that all children whose primary home language was other than English be retested in their own language. When retested, seven of the nine children scored above the cutoff point. It was in 1972 that the United States District Court in Larry P. v. Riles[8] supported a similar class action brought on behalf of six black elementary school children in San Francisco. There again the evidence was persuasive, with blacks constituting 66% of the population in EMR classes and only 28% of the district enrollment. Ruling that these disproportionate numbers constituted a "suspect classification," the Court found that incorrect placement of children in EMR classes was irreparable injury because the curriculum was less demanding, teacher expectations were low, and students were subjected to ridicule and feelings of inferiority. The Court issued a preliminary injunction requiring that no black student be placed in an EMR class on the basis of criteria which rely primarily on the I.Q. tests that were currently being administered. In 1974, the Court affirmed the order in an appeal, giving further injunctive relief to the plaintiffs.

While judicial remedies were being ordered in California to protect minority students from inappropriate placement in special education, legal battles were being fought on other fronts to assure that children were not being unfairly excluded from educational service. In 1971, the Pennsylvania Association for Retarded Children (PARC) brought a class action suit on behalf of fourteen mentally retarded children, challenging a state statute under which retarded children could be excluded from public education.[9] The suit was made to secure a child's rights to notice and full due process procedures as a prerequisite to any change in status, the establishment of free public education programs appropriate to the child's needs, and compensatory education for those children who had been excluded from school. The plaintiffs argued that denial of an education is a Constitutional violation of equal protection. They argued that placement without notice or the opportunity for a hearing was a denial of due process. In this landmark case, the U.S. District Court in PARC v. Pennsylvania found that all mentally retarded children can benefit from an educational program and that "the earlier such training and education begins, the more thoroughly and more efficiently a mentally retarded person will benefit from it." [10] The Court also held, "It is the Commonwealth's obligation to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity..." However, the Court explained that the definition of appropriate must be seen within the context of the presumption that among alternative programs "placement in a regular school class is preferable to placement in a special public school class." [12] The case resulted in a consent agreement between the plaintiffs and the defendants and the Court's appointment of two masters to oversee its implementation. In its resolution, the PARC decision attempted to remedy the three major legal and educational issues surrounding special education - unjair exclusion, inappropriate placement, and quality of instruction.

In 1972, a similar class action suit was brought on behalf of seven "school excluded" children in the District of Columbia. There, the defendants argued that the plaintiffs were attempting to force them to divert funds from other educational programs in order to benefit exceptional children, and that such action would violate the rights of other children. Here again, the federal court based its reasoning on the "equal protection" and "due process" clauses of the Constitution. In Mills v. Board of Education, [13] it decided that the claim of insufficient funds was an inadequate defense. It found that equity dictated if sufficient funds were not available to provide all educational programs that were desirable, the funds should be expended so that no child is entirely excluded from public education. In 1975, a motion of contempt was filed by the plaintiffs, at which time the Court appointed a master to oversee the special education program of the District of Columbia.

The *PARC* and *Mill* decisions set the stage for the passage of Public Law 94-142, which, at the end of a long lobbying campaign and considerable legislative debate, was signed by President Gerald Ford on November 29th, 1975.[14] In 1973, Congress had overriden a presidential veto to extend Section 504 of the Vocational Rehabilitation Act, directing state agencies to give priority to clients with severe handicaps and to allow such clients a role in determining their rehabilitation programs. Section 504 also specifically prohibited discrimination against handicapped individuals in any program receiving federal assistance. The revisions in Section 504 were significant because they marked a point at which federal legislation was designed in a regulatory context as opposed to a mere compensatory one. However, Public Law 94-142 went much further. P.L. 94-142 was designed to assure that all children have available to them "a free appropriate education and related services designed to meet their unique needs."[15] The text of the legislation included the finding that more than one half of the estimated eight million handicapped children in the United States were not receiving appropriate educational and related services. It included the claim that one million of these children were entirely excluded from school.

It was not the intention behind 94-142 to establish new rights for the handicapped. The purpose was to implement, reinforce, and clarify those constitutional and legal rights already in existence. It would accomplish this by defining standards of appropriateness, setting down steps for ensuring due process, and defining the respective obligations of state and local jurisdictions. In so doing, the new law reduced handicapped people's reliance on Section 504 as a means for deriving educational benefits. More important than this, 94-142 made litigation on behalf of the handicapped easier. While prior to its passage, plaintiffs had to rely on complicated constitutional reasoning as the basis for a suit, now they had available specific statutory requirements upon which they could build their legal arguments.[16]

The requirements of the mandate imposed under P.L. 94-142 are quite unambiguous. In terms of evaluation and placement, due process procedures are required to assure that no student is unduly excluded from service or inappropriately assigned. Racially and culturally biased instruments are excluded, as is the reliance on any single criterion for evaluation. All tests must be given in a child's native language. Once an evaluation is completed, parents must be granted provisions for a grievance procedure which includes the right to counsel. According to the law, any child found in need of special educational services must be placed in the "least restrictive environment." This means that handicapped students must be "mainstreamed," or placed with nonhandicapped children to the maximum extent that is possible and appropriate. In addition to this, each handicapped child must be provided with an "individualized educational program" (IEP) which must be reviewed and revised annually so long as a child is placed within a special education program.

In order to offset the anticipated costs incurred by state and local jurisdictions as a result of the new mandate, Congress authorized funding for a part of the expenses. The portion of the national expenditures authorized for federal assumption were to be progressively phased-in over a five-year period. It would begin at five percent of the total national cost in 1978, the first year in which the law would take effect, and increase up to forty percent by 1982.[17] Entitlements would be computed by multiplying the number of handicapped children in a state by a percentage of the nationwide average per pupil expenditure. While local educational agencies are expected to prepare annual applications for funds in the form of program plans submitted to the state, the law is explicit in placing responsibility for monitoring, evaluation, and compliance at the state level. Moreover, the specific obligation to assure the identification, location, and evaluation of all handicapped children is placed with the states. Based upon an estimated national average, the legislative text includes an expectation (not requirement) that twelve percent of the school population in any given state will require special education services.

Notwithstanding the remarkable efforts on behalf of explication, those drafting the legislation in 1975 could not have anticipated all the problems that would intervene between the original statutory intent and actual implementation. It is now part of the conventional social science wisdom that something gets lost along the way from the point at which policy is made to the point at which it is put into practice. Sometimes the change is a function of bureaucratic resistance; other times, it is the result of poor management or planning. The literature on implementation is replete with case studies of well-intentioned programs gone awry at the action stage of the policy process.[18] Recently, the experience of special education reform has added to this literature.[19]

The local problems that have grown out of the federal mandate governing special education are multiple and complex. To begin with, Congress never appropriated the funds that were necessary for the federal government to absorb its share of the financial burden that grew out of the demand for increased services. Therefore, a disproportionate share of the responsibility has fallen upon the states and local school districts. This responsibility is particularly burdensome during a period of economic scarcity and fiscal retrenchment. To make matters worse, the costs for implementing compliance are much higher than anyone had anticipated.[20] In addition to the financial problems resulting from P.L. 94-142, there are managerial ones. The due process requirements concerning evaluation and the emphasis on mainstreaming often necessitate significant changes of an organizational type in social services delivery systems.[21] Such changes are difficult and don't always get the support of more traditional personnel within school systems. Many local districts simply do not have the kinds of data-collection capabilities that are necessary for the evaluation and placement procedures required.[22]

The overall instructional strategy underlying Public Law 94-142 was certainly consistent with the emergent philosophy that was beginning to dominate the special education profession during the early seventies. This philosophy of "mainstreaming," which dictated that children be taught in the "least restrictive environment," was designed to counteract the stigmatization attached to labels and the stereotypical behavioral and learning expectations imposed by teachers.[23] However, notwithstanding the credibility, conviction and good intentions which supported the mainstreaming philosophy, it is important to note that there is not total concensus within the profession concerning its merits. Much of the disagreement with the emergent norm is well-founded. There is a significant body of research, for example, which suggests that regular teachers are not receptive to mainstreamed handicapped pupils, and many are not confident in their own ability to deal with such children.[24] It is common knowledge that one of the major reasons why certain students are referred for special education services is that many regular teachers do not want to deal with them or their problems. As the research on effective schools referred to in the last chapter suggests, such poor attitudes and low expectations on the part of teachers are generally associated with unsatisfactory student performance.[25] To compound these problems, it has been shown that handicapped pupils in mainstreamed classes also have difficulty winning acceptance of their own peers, a factor which can further contribute psychological damage to such children.[26]

It is not the purpose here to resolve the debate over the merits of mainstreaming. It is important at this point only that the context of the disagreement be known. The fact of the matter is, however, that the school Administration in New York City believed in and supported the philosophy embodied in Public Law 94-142. In fact, the emphasis placed upon the educability of handicapped children was in basic accord with the Administration's own philosophy. However, the difficulties that have been associated with local school districts attempting to comply with the law are also relevant to the situation in New York. In this sense, the case study which follows is instructive of a set of problems which tended to characterize many urban school districts since 1978.

NEW YORK CITY: THE BUREAUCRACY VS. THE LAW

The New York City public schools began providing services to handicapped children in 1906. By 1934, the array of programs made available included ungraded classes for the mentally retarded, special schools and classes for the physically handicapped, homebound instruction, and "schools of opportunity for behavior problem boys who are unable to make suitable adjustment in the traditional school."[27] The Board of Education perceived its commitment to special education as a noteworthy and progressive innovation. In her annual report to the Superintendent of Schools, Associate Superintendent Margaret

McCoovey in 1934 proudly explained that new programs were established "to give every child an equal chance with his brother, and a chance to become a self-sustaining member of society."[28] She further explained that parents no longer regard special education as a stigma, since the categorization of handicapped children was designed to focus attention on their educational needs and strengthen appeals for financial support.

Superintendent McCoovey could never have anticipated that the programs she had developed would give rise to a bureau structure within the central school administration that possessed unmitigated power. Each bureau was built in response to the demands of a special needs group within the special education community. Thus, both bureau and client enjoyed a reciprocal relationship which was remote from outside interference or control. In return for the special services they derived from the central administration, these client groups would serve as political advocates who would support the growth of the bureaus and the budgets they commanded. There stood the most entrenched bureaucracy within the central administration of the school system, guarded by the professionalsim of its own specialized service and defended by a select group of interests who were well-organized, articulate, and aggressive.

One might argue that there was nothing inherently wrong with the arrangement. We assume that the respective client groups were able to maintain their own system of quality control and accountability that would be the envy of the most adamant proponent of community control. The problem was, however, that the system was exclusive. Not all children within the handicapped population were served. Not all had their own personalized bureaus with which to work. The bureaus did not have to deal with a larger public and wouldn't. As one attorney for Advocates for Children explained:

> Under the old system, the bureaus ran everything. They were untouchable. They each served their own special constituency, but the point is that many kids were not served at all. They were excluded. Only some of the kids were represented under the old system.[29]

Representation was only one problem with the bureau structure. By 1975, this organizational design, which emphasized categorization, labeling, and the segregation of children on the basis of handicapping condition, was in conflict with federal law. By 1975, it appeared to many reformers within the special education profession that the antiquated administrative structure was better serving the needs of the bureaucrats than it was the children. Under the traditional organizational arrangement, the major service delivery mechanism of the Division was its Office of Field Operations which was primarily composed of six instructional bureaus. (See Illustration IV-1.) Each bureau was set up to deal with children in self-contained classes that were formed on the basis of handicapping condition. Along side the bureau programs were nonbureau self-contained programs for children with multiple handicaps.[30] Mainstreaming was not a common practice. In addition to the Office of Field Services, the Division was composed of an Office of Finance and Administration and an Office of Pupil Certification. The former was concerned with business matters. The latter performed the important functions of evaluation and placement. Unfortunately, neither office performed its functions very well. The data systems within the business offices were primitive and unreliable. The evaluation and placement operations were so inefficient that they became a source of major litigation long before Public Law 94-142 was on the books.

Since the early nineteen sixties, Section 4407 of the New York State Education Law required local school districts to evaluate their own schools in order to determine whether they were capable of meeting the individual needs

FORMER TABLE OF ORGANIZATION

DIVISION OF SPECIAL EDUCATION

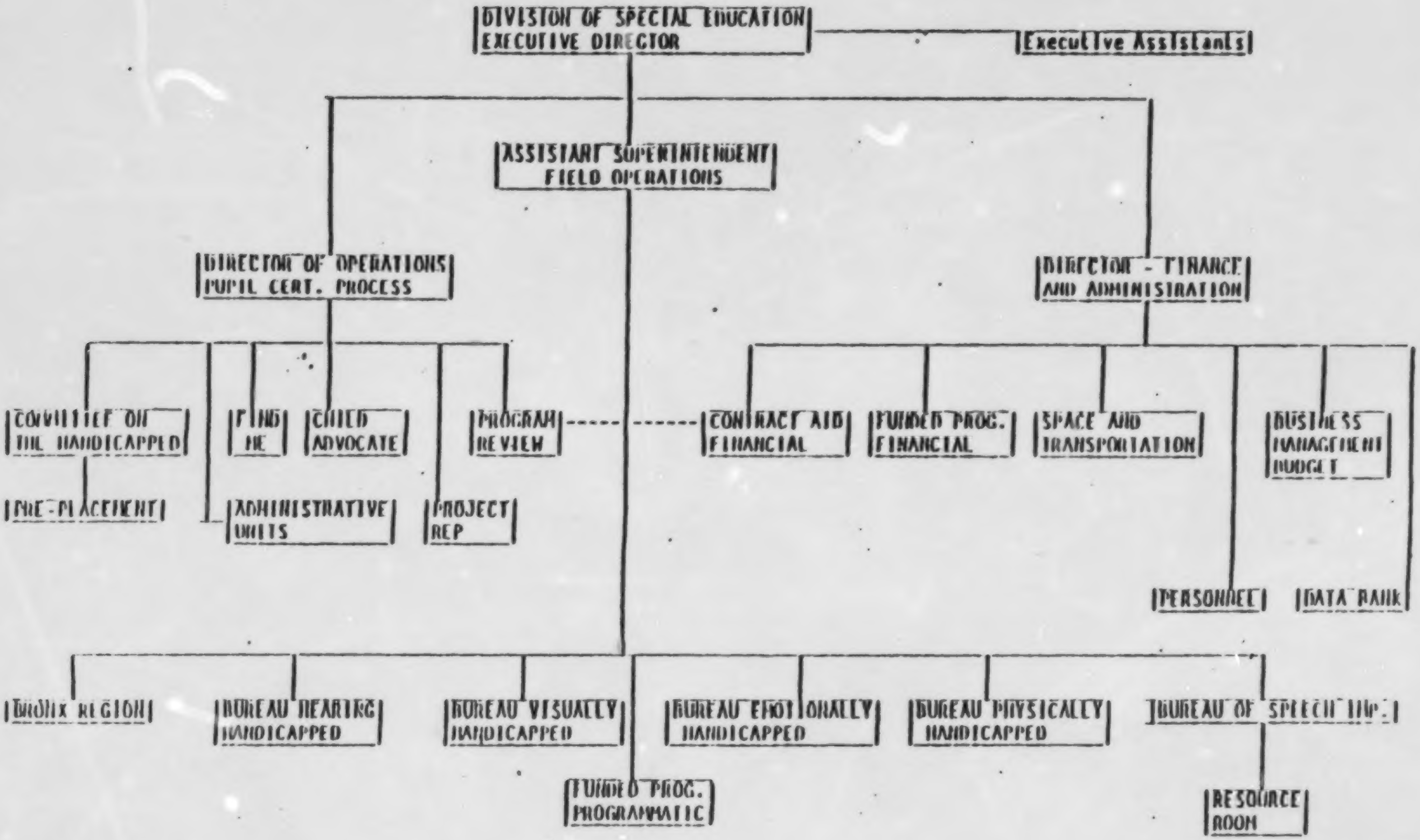

DIVISION OF SPECIAL EDUCATION EXECUTIVE DIRECTOR
Executive Assistants
ASSISTANT SUPERINTENDENT FIELD OPERATIONS
DIRECTOR OF OPERATIONS PUPIL CERT. PROCESS
DIRECTOR - FINANCE AND ADMINISTRATION
COMMITTEE ON THE HANDICAPPED
FIND ME
CHILD ADVOCATE
PROGRAM REVIEW
CONTRACT AID FINANCIAL
FUNDED PROG. FINANCIAL
SPACE AND TRANSPORTATION
BUSINESS MANAGEMENT BUDGET
PRE-PLACEMENT
ADMINISTRATIVE UNITS
PROJECT REP
PERSONNEL
DATA BANK
BRONX REGION
BUREAU HEARING HANDICAPPED
BUREAU VISUALLY HANDICAPPED
BUREAU EMOTIONALLY HANDICAPPED
BUREAU PHYSICALLY HANDICAPPED
BUREAU OF SPEECH IMP.
FUNDED PROG. PROGRAMMATIC
RESOURCE ROOM

ILLUSTRATION IV-1

of handicapped children. In cases where the local school was found not to have the necessary means, a recommendation would be made for a private placement. A contract with a private school would then be entered into by the State, which would contribute funding of up to $2500 per year. In 1974, the state law was amended. Under its new provisions, local school districts would be required to assume financial responsibility for all private placements, except for those cases where out-of-state residential treatment was necessary. If enforced, this new law could place a severe financial burden on the local school district in New York City, for it had been a common practice to deem many handicapped children "uneducable" and exclude them from service in either a public or private setting. As one attorney from Advocates for Children, who later joined the school system's legal staff, explained,

> Medical discharges were not unusual around here. We were discharging kids who were said to be unfit for education. This was common practice within the Board of Education at one time.[31]

By 1971, proceedings had been introduced in federal court on behalf of brain-injured and other handicapped children in New York City who had not been receiving appropriate educational services. The plaintiffs also brought to the attention of the Court the lengthy waiting lists where children had been waiting for either evaluation or placement. On June 22nd, the United States District Court denied the plaintiffs' motion for a preliminary injunction against the Board of Education, which they alleged was denying equal educational opportunities to brain-injured children.[32] However, on December 14th, the United States Court of Appeals held that the district court should have retained jurisdiction in the case, pending the clarification of issues of state law.[33] At that point, the plaintiffs began administrative proceedings before the state Commissioner of Education.[34] On November 26th, 1973, Commissioner Ewald Nyquist ruled in the momentus Riley Reid[35] decision that the Board of Education's failure to evaluate and place handicapped children was in violation of state law. He ordered the Board to immediately place all children diagnosed as handicapped in an appropriate public or private program. He also ordered the Board to devise a long-range plan to eliminate the waiting lists for evaluation and placement.

Between 1974 and 1975, the special education enrollment in New York City increased by 19.2%, growing from 33,170 students to 39,553 students.[36] It was the largest single-year increase in the history of the school system. No doubt the system had begun to serve a population it had never reached before. However, it would not be long until outside advocates began to ask the question, "how?" When that happened, the Board once again found itself in federal court. On June 11th, 1975, seven black and Puerto Rican children attending special day schools for the "socially maladjusted and emotionally disturbed" (SMED) brought a class action suit into the U.S. District Court in Lora v. Board of Education. The plaintiffs in the Lora case claimed that their constitutional rights of due process, equal protection, and involuntary servitude were violated by being placed in racially segregated SMED schools. They challenged the evaluation and placement techniques that had been used, and produced data which showed that while 59.8% of the school population was black or Hispanic, 92% of the children in SMED schools were from those minority groups.

It was not long after the Lora case was brought into Court that President Ford signed the Education for All Handicapped Children Act. Within the next year, the New York State legislature passed the "Guiffreda Bill" which sought to codify into state law all the rights and procedures guaranteed in P.L. 94-142. In the meantime, the administrative apparatus in the Division of Special Education had become overloaded with requests for evaluations and placement. Many parents took advantage of the remedies provided in the Commissioner's Riley Reid decision and opted to put their children in private schools. Special education officials in the City were not pleased with this practice because it was from their budget that the costs of private schooling would be paid.

On April 6th, 1976, the Commissioner reaffirmed his original decision. He stated that parents who had enrolled their children in private schools because the Board of Education had failed to provide a timely evaluation or placement were entitled to tuition reimbursements.[38] He added that the Board of Education could not transfer such children during the school year when public placements became available. On June 30th, 1976, the Commissioner established due process procedures whereby students could appeal a placement decision if they were not satisfied with it.[39] By September of 1977, the size of the waiting list for evaluations had grown to over 5000 children. Added to this was another 2100 pupils who were awaiting placements. That situation brought more appeals to the Commissioner. Nyquist then held that the Board of Education must diagnose and place a child within sixty days of referral.[40] He ordered that no child be transferred from a private placement unless that placement was found to be inappropriate. Finally, he instructed the Board of Education to submit a new plan to eliminate its waiting list on January 2nd, 1978.

In the meantime, the Division of Special Education was in the process of examining the merits of its bureau structure, which by then was in conflict with the educational principles embodied in the federal and state laws. In October of 1977, a pilot project for regional management was set up in the Bronx. The Bronx Regional Office, which covered the entire borough, was designed to incorporate all special education services under a single management structure. Its responsibilities would include evaluation, placement, program development, supervision, monitoring, and support services. Under the pilot operation, the old bureau structure was abolished. An emphasis would be placed on the elimination of labels. It was also hoped that under the new plan, special education personnel would work more closely with school principals and teachers. Under the old structure, special education people had usually been seen by staff in the districts as an arm of the central administration. The Bronx Regional Office had hoped to achieve some level of integration.

The ideas behind the regional plan appeared to be sound, but the project was put into place rather late. Helen Feulner, the Executive Director of the Division, had proposed a reorganization plan based upon a regional structure as early as April of 1976. There was no action on the proposal. Now in October of 1977, eight months before a new Administration was due to take office, a pilot program was begun. The incumbent Administration would not even have adequate time to evaluate its own experiment.

In February of 1978, a month after it was due, the Division of Special Education submitted its "Plan for Elimination of Waiting Lists for Evaluation and Placement" to the state Commissioner. In a letter to the Commissioner, the plaintiffs reacted to the plan by calling it vague, ambiguous, and unsatisfactory. By this time, the United States Office for Civil Rights had found the Board in violation of Section 504 of the Rehabilitation Act of 1973.

The reason for the violation was the "denial of appropriate education services to handicapped students due to excessive waiting lists." On June 23rd, eight days before the new Administration was due to take office, the Division of Special Education submitted to the state Commissioner a new plan for the elimination of waiting lists.

THE ADMINISTRATION'S INHERITANCE: BACKLOGS AND BAD WILL

As Frank Macchiarola took office on July 1st. The Division of Special Education was under criticism from the state Commissioner of Education, the Office for Civil Rights, the federal courts, and an assortment of advocate groups. While the regional experiment was going on in the Bronx, the old bureau structure was still alive and well in the four other boroughs. One of the first executive actions that the new Chancellor took when he arrived at Livingston Street was to place all senior officials within the central administration on probation for a period of six months. By the end of this time, a decision would be made regarding each individual's tenure. This was a common practice within the public sector and it was an ordinary feature of municipal government in New York. But it had never been done at Livingston Street. Needless to say, Macchiarola's announcement was not well received within the bureaucracy. In particular, Helen Feulner, who had served as Executive Director of the Division of Special Education for eight years, took exception to the Chancellor's action. She demanded a meeting at which time she told the new school chief that she would not wait six months for such a decision. She wanted the issue to be resolved immediately. It was. Feulner was replaced by Charles Schonhaut, who would serve as Acting Executive Director until a permanent one was chosen.

Charles Schonhaut had formerly served on the staff of Chancellor Irving Anker. He was a major actor in that Administration. He did not consider himself a special educator, but he knew the system well. On a temporary basis, he could keep things from falling apart in that troubled Division. Afterwards, he would remain with the Administration. On July 5th, the Chancellor received a letter from the State Commissioner criticizing the Board of Education's plan to eliminate the waiting lists that had been submitted in June.[41] More work had to be done. Schonhaut was directed to develop a new plan. In August, Macchiarola commissioned Alan Gartner of the City University of New York to conduct an evaluation of the Bronx Regional Office. Gartner, who had a reputation as a strong advocate for decentralization in New York City and a supporter of the mainstreaming concept, was expected to be favorable to the thinking behind the regional plan.

On November 22nd, Schonhaut compiled a "Status Report on Evaluation and Placement."[42] The report showed that 8259 children were awaiting evaluation. Of this group, 2428 were on the list for more than sixty days without an offer for an appointment. It also showed that 4449 students were awaiting placement, of whom 2765 had never been offered a site. In January of 1979, the Commissioner's Office prepared its own "Report on New York City's Education of Handicapped Students."[43] The report noted the growing size of the waiting lists. It observed that the Board's efforts to evaluate and place handicapped children have been a "chronic problem." It found that the Board's June 23rd, 1978 plan to reduce the waiting lists "failed completely." On January 16th, 1979, the Chancellor submitted to the Commissioner a new "Plan to Evaluate Children in Compliance with the Commissioner's Regulations."

The Gartner study on the Bronx Region was completed in December of 1978.

The two-hundred-page document ended with guarded praise and a good number of cautionary recommendations. From a comparative perspective, the evaluation found that the regional design is a "more workable and better strategy" than the centralized bureaucratic system in terms of operations, accountability, and the general delivery of services.[44] However, beyond the issues of organization and management, Gartner and his colleagues found much that was wanting in the Bronx Region. They did not see any distinct inclination in the regional setting to emphasize placements in the least restrictive environment. They did not find any close integration between district personnel and regional staff. They warned of a "real danger" that over a period of time "a set of regional systems will develop their own hierarchies and bureaus, create a series of autonomous units, and become even more inaccessible than the present system is."[45]

There was a clear message to be found in the Bronx Report. While the regional plan was marginally preferable to the bureau structure, it did not go far enough. There was a basic flaw in any organizational design which assumed that a central division or region could be responsible for the day-to-day operation of programs that are carried out in school buildings located in the districts. There was little chance that handicapped children could be mixed into the mainstream if their teachers were not. Gartner wanted more decentralization. He saw a monitoring role for the Division, but emphasized that all educational initiatives should be run from the school and district levels. He explained,

> Our proposals are based on the assumption that the local school districts are responsible for the education of all youth residing within that district. We see little chance of change...unless there is a major structural realignment of the DSEPPS (Division) - Districts relationship.[46]

It was not long after the Gartner report was completed when Brooklyn Legal Services, a small, public-interest law group located off Livingston Street, began litigation in the United States District Court concerning the unresolved waiting lists. The original affidavit filed in Jose P. v. Ambach[47] on February 15th, 1979, initiated a class action suit on behalf of all handicapped children deprived of a free, appropriate education because of the Board of Education's failure to perform timely evaluations and placements. The attorneys for the plaintiffs cited a long history of frustration they had experienced at both the city and state levels. Indeed, the new litigation was indicative of the fact that the plaintiffs had even lost faith in the Commissioner's ability and will to bring the situation to a satisfactory resolution. As John "Chip" Gray, the original attorney from Brooklyn Legal Services, explained,

> The State Commissioner appeared to be abandoning the Riley Reid decision. He was becoming less aggressive. At that point, we chose to start litigation against the State and the City because the law states that it is the State's responsibility to assure compliance with 94-142.[48]

Public Law 94-142 made litigation easier for special education advocates. The Jose P. case was the first to be brought against New York on the basis of its statutory provisions. Jose P. would prove to be the most significant special education case in the City, but it would not be the last. On March 2nd, United Cerebral Palsey of New York initiated another class action suit against the Board of Education on behalf of all handicapped individuals residing in New York City legally entitled to a free, appropriate education.[49] This case went beyond the evaluation and placement issues cited in Jose P. to questions of quality - i.e., timeliness of evaluations, kinds of programs available, mainstreaming opportunities, facilities accessibility, and the preparation of individualized education plans (IEP's).[50] Taken as a whole, these questions moved the case beyond the policy formation phase and pushed it to the level of implementation. As Michael Rebell, attorney for U.C.P., explained,

> In short, the U.C.P. plaintiffs were advising both the defendants and the court that solutions to the long-standing special education problems in New York City would require a structural reform of the entire system. [51]

One of the first major court proceedings with regard to the Jose P. case took place on May 16th, 1979. At that time, Charles Schonhaut, representing the Board of Education, stood before Judge Eugene Nickerson and admitted that the Board had failed to evaluate and place children in a timely fashion. At that time, the Judge issued a Memorandum and Order certifying the class action and finding that the Board had failed to comply with federal and state requirements. A final judgment would not be issued in the case until more facts were gathered concerning the problems of implementation and their prospective solutions. In order to facilitate that fact gathering, Nickerson appointed former federal Judge Marvin E. Frankel to serve as Special Master in the case. Frankel came to the case with a reputation as a judicial activist. As a judge, he had been intimately involved in prison reform in New York. In 1974, he presided over the Aspira [53] bilingual education case that involved the City school system. Now he would play a major role in Jose P. As Judge Nickerson's Memorandum and Order prescribed:

> ...he (the Master) will not be limited to receiving and reporting evidence. He will be permitted to consult informally with the parties and with outside experts and others and receive materials not in evidence.
>
> The Master shall evaluate the plans promulgated by the Board and shall make such recommendations as he deems appropriate as to what decree the court should enter to provide the requisite public education to handicapped children in the City of New York. [53]

In August, Judge Nickerson recognized the overlap between the Jose P.

and the U.C.P. cases and issued an order in the latter deferring it until the receipt of a final report by the Special Master in Jose P. On October 2nd, another case was brought before Judge Nickerson on the basis of the rights ensured under Public Law 94-142. Dyrcia S. v. Ambach [54] was argued by the Puerto Rican Legal Defense fund on behalf of a group of handicapped students who were in need of bilingual and bicultural special educational services, but had not yet been properly evaluated or placed. The Dyrcia S. case would eventually add a new dimension to the Jose P. proceedings.

As litigation was being brought against the school system under the statutory provisions of Public Law 94-142, there was still a suit pending in federal court that had originally been argued on Constitutional grounds. Brought into federal court in 1975 prior to the enactment of P.L. 94-142, the Lora case was finally decided by U.S. District Court Judge Jack Weinstein on July 2nd, 1979. Weinstein ordered the following relief in the class action concerning the unlawful segregation of minority students in special day schools for the "socially maladjusted and emotionally disturbed":

- The identification and evaluation of students illegally placed in special day schools
- The development of nondiscriminatory standards, criteria, and procedures for evaluation and placement of emotionally handicapped students
- The development of a full continuum of services for emotionally handicapped children with placement in the least restrictive environment
- The preparation of documents explaining parents due process rights
- The development of an in-service training program and a continuing training program for all current and future staff within the school system in order to sensitize individuals about the dangers of racial and cultural biases and the needs of special education children
- Increased services and programs for the special day schools
- The establishment of a comprehensive reporting and monitoring mechanism to ensure compliance with the Court order [55]

Judge Weinstein's decision was far reaching and innovative. It had significance as a constitutional case. However, to a large extent, it was dated. Some of the remedies ordered already had been at the implementation stage. Some of its more important features would be included under the statutory issues covered in the Jose P. case. In the end, Lora came to a rather curious conclusion. The Administration agreed with the mandates in the Judge's order but differed with it on an important matter of principle. Hence, within six months of the original decision, the Board of Education appealed the case. The problem, from the perspective of the Administration, was the Court's finding of intentional discrimination with regard to the disproportionate number of minority children in special day schools. As one attorney for the Administration explained,

> We appealed Lora because we did not want it said that there was intentional discrimination. We were not so interested in its results because, in fact, there were none. We just wanted to be on the right side of the issue. [56]

When the United States Court of Appeals handed down its decision on Lora in March of 1980, it came out in favor of the Board. Citing Washington v. Davis, Judge Milton Pollack found that"...inferences from evidence of discriminatory impact will not substitute sufficiently for a finding of actual motivation..." He added, "The burden of proof remains with the plaintiffs." [57] The Administration had won its point of principle. The fact of the matter is, however, that by 1980, it had already begun to move towards compliance and there was no intention to change direction. The Division of Special Education was in the process of reevaluating the children in special day schools. In December of 1979, the "Lora Decree Staff Development Program" began, which was designed to acquaint school personnel with laws and regulations governing the handicapped, the special needs of handicapped pupils, and the problems inherent in racial, ethnic, and cultural stereotyping. Carried out under the direction of Alan Gartner, the monumental training program reached 55,000 teachers and 15,000 administrators throughout the school system over the 1979-1980 school year.[58]

By March of 1980, all the other major issues of the Lora case were either decided, or under negotiation within the broader framework of the Jose P. case. Recognizing the overlap of the two cases, Judge Pollack himself recommended in his Appellate decision:

> In order to avoid potentially conflicting mandates, and in the interests of avoiding waste and duplication, the District Court should consider the feasibility of consolidating the present case with Jose P. v. Ambach...since so many of the same issues are common to both cases, it might be in the interests of judicial husbandry and all concerned.[59]

As things turned out, the two cases were never consolidated. Lora, at that point, became a moot issue. It, like most other special education litigation in New York City, was simply overshadowed by Jose P.

THE JUDICIAL MANDATE: "SPECIAL EDUCATION IN TRANSITION"

On July 5th, 1979, after the completion of a year-long national search, the Chancellor appointed Dr. Jerry Gross as the new Executive Director of the Division of Special Education. The thirty-nine-year-old educator had been serving as director of the La Grange Area Department of Special Education in Illinois since 1974. Between 1969 and 1974, Gross served as Assistant Director of the Special Education Division in the Minneapolis public schools. Prior to that, he had held positions as a special educator in Torrance, California; Tuscan, Arizona; Carbondale, Illinois; and Boston, Massachusetts. At the time of his appointment in New York, Gross was Vice-President and President-Elect of the Council of Administrators of Special Education, a national organization.

Gross had impeccable credentials as a special educator. He possessed a sterling reputation nationally as an articulate advocate of decategorization. Among the goals he stated at the time of his appointment was the expansion of mainstreaming opportunities for special education children, and the relocation of referral and placement services closer to the schools where children are served. Gross also promised a reorganization of the Division. He came to New York with his own working model for special education services. That model was an encapsulation of all the principles and mandates included in Public Law 94-142. It was consistent with the recommendations in the Gartner report on regionalization. Gross even brought with him a small corps of his own people who would help him implement the plan.

Gross' appointment gave birth to a new optimism. The selection of a permanent Executive Director of Special Education had been long awaited. However, the problems he and his staff would face were enormous. There was a court order, pending law suits, and an emerging budget crisis. There were those long, irradicable waiting lists that continued to grow. And there was that large, cumbersome, obstreperous bureaucracy that defied change. By 1981, the student population in the Division of Special Education would be larger than the school systems of Buffalo, Rochester, Syracuse, and Yonkers combined. If the Division itself were an independent school district, it would be the sixteenth largest in the nation, approximately the size of the Cleveland school system.

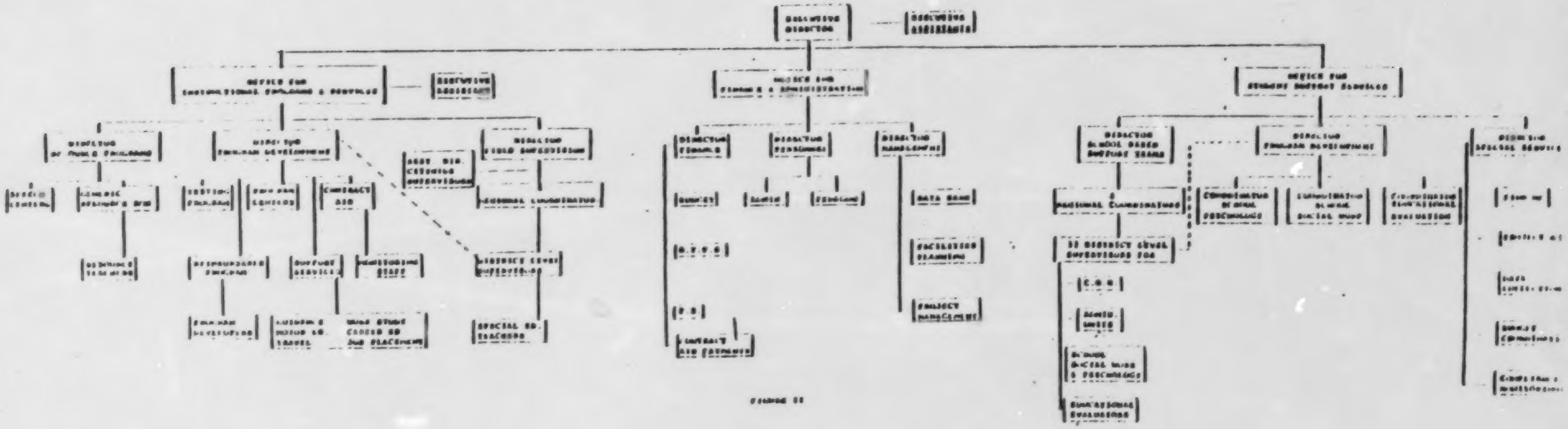
The summer of 1979 was a busy one for the new Executive Director and his staff. By its end, they had designed a new plan for service delivery in the Division. In early September, the plan entitled "Special Education in Transition" was voted on and approved by the Board of Education.[60] Under a newly proposed Divisional structure, an Office of Student Support Services would assume responsibility for pupil evaluation and certification, and an Office for Instructional Programs and Services would replace the existing Office of Field Operations. (See Illustration IV-2.) An Office of Finance and Administration would continue to administer personnel, budget, and other housekeeping operations. There were two central themes governing "Special Education in Transition":

> 1. Delivering special education services close to the child and teacher where those services can be most effective
>
> 2. Defining the services in order to minimize reliance on categories and labels...[61]

Under the old structure, children referred for special education services would be evaluated by a district Committee on the Handicapped (COH) which was part of the central divisional structure. This district COH would usually include a psychologist, an educator, and a parent. There was one of these units in each of the thirty-two school districts, but in most cases, the professionals who sat on it were not from the child's home school. If a child were found in need of special services by this district unit, its decision would need approval by the central COH to which it reported. At that point, the child would be placed by an Administrative Unit reporting to the central COH. The placement would usually be made in a "self-contained" program run by a central bureau which was part of the Office of Field Services. By definition, self-contained programs did not allow handicapped children much

ILLUSTRATION IV-2

TABLE OF ORGANIZATION - PROPOSED
DIVISION OF SPECIAL EDUCATION



EXECUTIVE DIRECTOR
OFFICE FOR FINANCE & ADMINISTRATION
DIRECTOR FINANCE
DIRECTOR PERSONNEL
DIRECTOR MANAGEMENT
DATA BANK
FACILITIES PLANNING
PROJECT MANAGEMENT
CONTRACT AID PAYMENTS
REGIONAL COORDINATORS
DISTRICT LEVEL SUPERVISORS
SPECIAL ED. TEACHERS
OFFICE FOR STUDENT SUPPORT SERVICES
REGIONAL COORDINATORS
EDUCATIONAL EVALUATORS

Source: "Special Education in Transition," op. cit.

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opportunity to be mainstreamed with children in regular education. Parents did possess due process rights to appeal evaluation and placement decisions at each stage of the process. A final appeal could be made to a Hearing Unit appointed by the Board of Education.

A basic concept distinguishing the Gross plan was the school-based approach to service delivery. Under his model, each school would contain a School-Based Support Team (SBST) which came under the new Office of Student Support Services. The SBST would consist of a psychologist, a social worker, a special educator, the school principal (or designee), a guidance counselor, and the regular classroom teacher of the child. All children referred for special education services would be reviewed first by their SBST within the environment of the home school. The SBST would make an initial evaluation concerning whether a child was in need of special services, and if so, what kind. At that point, the SBST would attempt to prescribe a program of educational and support services that would be provided to the child at the home school. This prescription would ordinarily include a resource room program in the school which is administered through the new Office for Instructional Programs and Services. Resource room programs are designed for mildly handicapped students who spend approximately eighty percent of their school time in a mainstreamed setting with regular education students. The other twenty percent of their time, spent in the resource room, is meant to provide support services that are responsive to a child's special needs. This SBST approach not only allows the maximum opportunity for mainstreaming, but also calls for a good deal of joint planning between regular and special education teachers at the home school site.

Under the Gross plan, only those special students whose handicapping condition does not allow them to be served on a resource room basis would be referred by the SBST through the normal COH process. These "low incidence" programs, which might be carried out in a self-contained day school or alternative school setting, would also be operated by the Office of Instructional Programs and Services. However, even in these settings, an attempt would be made to provide whatever mainstreaming opportunities are feasible within a particular "continuum of service." Under the new Office, the bureau structure was eliminated. The Office would also provide support services to all schools which house special education programs and classes.

The message behind Gross' school-based proposal for service delivery was quite clear: Keep a child within the regular educational setting as much as is practicable. Also incorporated within "Special Education in Transition" were commitments to timely evaluations and placements, parental involvement in all stages of the educational process, procedural safeguards, and staff development and training. The new organizational structure would include six regions, the function of which it would be to coordinate and integrate the work between the central division and the thirty-two community school districts.

Gross' plan was designed with an eye toward the law and the impending judgment that would be handed down by Judge Nickerson in the Jose P. case. In fact, Gross consulted with the plaintiffs in the case as he went about the task of designing the future of the Division where he had just taken charge. In the end, "Special Education in Transition" would become the basis of a prenegotiated Court judgment. Gross did not perceive either the Court or the plaintiffs as adversaries - for he was in basic agreement with the law and their determination to enforce it. That is the reason why he was hired. And this attitude led to an initial exchange of confidence and good will with the plaintiffs. As one attorney for the latter observed,

> Jerry Gross was a professional committed to reforming the system. He early on appeared to have decided to view the court mechanism as an opportunity to promote reforms in the system, rather than as an outside intervener to be resisted at every turn. [62]

Another major force behind the spirit of cooperation that was pervasive before the final judgment got handed down, was the role assumed by the Court-appointed Master Marvin Frankel. Frankel had originally been appointed as a fact-finder; as someone who would provide relevant information to the Judge in order to help him reach a fair and workable solution. Frankel sought to perform this function by bringing the plaintiffs and the defendants together so that a judgment could be negotiated for the Court that was acceptable to both sides. In short, Frankel drove the negotiations. As one party in the case explained,

> Frankel expedited negotiations. He was very good at finding a middle ground, although he tended to get involved only when negotiations broke down. He played an active role, but it wasn't done in terms of making decisions. He managed to get the parties to reach their own resolutions. [63]

As the negotiations advanced towards an agreement, and as the Special Master came closer to making a recommendation to the Judge, there was still disagreement among the members of the Board of Education on how to handle the judgment legally. Should it enter into a consent decree and become legally bound by its provisions? Should it merely accept a judgment and, in a more flexible spirit of cooperation, agree not to appeal it? Or should the Board merely accept a judgment, attempt to carry it out, but leave the future legal options open?

On November 27th, Chancellor Macchiarola sent a memorandum to the Board of Education. [64] It stated that he fully supported "Special Education in Transition." However, he added that he could not recommend consenting to the proposed Jose P. judgment because it contained requirements that extend into the next two fiscal years. He reminded the Board members that the Board of Education does not control its fiscal future, so it could not commit itself to that extent. When the Board met on the next day, it agreed to accept the Chancellor's advice to accept a judgment and not enter a consent decree. Two days later, an attorney for the City who had been present at the Board meeting and was handling the case for the Board, sent a letter to the Master. It stated that the Board had decided not to consent to the proposed judgment, but that they would not appeal it. [65] The letter provoked fury on the Board of Education. On December 12th, Board member Amelia Ashe sent a letter of concern to the Chancellor and the other members of the Board saying that the Board had never agreed not to appeal the judgment. [66] She advised them that the Board had agreed neither to enter a consent decree or waive its right to reopen the case in the future. She requested that the attorney's letter to the Special Master be corrected by having it removed from the record.

On December 14th, 1979, Judge Eugene Nickerson issued an order and judgment. As expected, it was a combined product of Public Law 94-142, "Special Education in Transition," and the negotiated recommendations of the Special Master. The relief ordered included the following requirements:

- An outreach office, with adequate bilingual services, for the identification of all children in need of special education services
- The establishment of SBST's in all schools by April, 1981
- The provision of resources by the spring of 1980 for the timely evaluation of children, either by Board staff or by approved outside facilities
- Appropriate programs in the least restrictive environment, with the provision of a continuum of services including preventive services, resource rooms, and sufficient programs for handicapped students in both high incidence and low incidence programs, as close to the home as possible, with appropriate bilingual programs

- Commitment to hire personnel for all related services, such as physical and occupational therapy

- Facilities that are fully accessible to handicapped students, and close to their homes

- Commitment to issue a parents' rights booklet in English and Spanish [67]

The final judgment also included several specific time lines with regard to the implementation of the SBST's and the elimination of the waiting lists. The ordered relief would be implemented under the continued supervision of the Special Master. It called for the creation of a management information system and periodic reporting to the Master and the parties. Also required were two additional plans. A "January Plan" (1980) would set forth the detailed procedures for implementing the judgment. An "April Plan" (1980) would specify staff, space, and instructional materials needed to fulfill the judgment and the January Plan. Both plans were to be negotiated with the plaintiffs and approved by the Court. [68]

It was clear at this point that both the Master and the plaintiffs would have a legally defined long-term role in the Division of Special Education. This role would take them beyond the initial judgment through the implementation, supervision, and monitoring of the agreed-upon plan. It would make management within the Division a negotiated process. On February 27th, 1980, a consolidated judgment was issued by the Court incorporating all the provisions of the December 14th Jose P. order into the United Cerebral Palsey and Dyrcia S. cases. The Public Education Association and Advocates for Children, both of whom participated in negotiating the original judgment, were eventually granted amicus status on behalf of the plaintiffs.

THE COSTS OF COMPLIANCE: AN EMERGING CONTROVERSY

The Jose P. judgment was handed down by Judge Nickerson less than a month after the $92 million school budget deficit was made public in 1979. Special education spending had indeed contributed to that deficit, since school officials had already made a commitment to eliminate the waiting lists and improve services for children with handicapping conditions. Now, as the Administration went about the task of complying with the Court order, the financial situation would be further exacerbated. Here we see a classic case where a Superintendent (the Chancellor in this case) finds himself immersed within a set of cross-pressures - on the one hand, being told by the Court and federal law to increase services for special education children; on the other hand, being told by the Mayor and municipal officials to reduce spending.

Within a week after the judgment was made, school and City officials began public speculation and debate on the anticipated costs of complying with the new mandate. In addition to the 68,000 students who were then receiving special education services, new referrals were growing at a rate of 4000 per month. Executive Director Jerry Gross projected that 300 new classrooms would be needed by September, and he estimated that special education costs would rise by $350 million over the next three years. City budget director James Brigham declared that Gross' estimate was ridiculously high.[69] By then, the battle over budget controls was in full bloom. Just a few days earlier, Board President Steven Aiello sent his caustic letter to the Mayor and City Comptroller advising them that school officials had no intention to compromise their autonomy on spending.

On January 27th, 1980, Mayor Edward Koch appeared in Washington where he delivered a major address before the U.S. Conference of Mayors. The subject was mandates. Koch complained that New York, like other cities, was being required to provide services mandated by the federal and state governments which would cost $17.5 billion. He pointed out that of this amount, only $6.5 billion was provided by the federal government and $4.7 billion by the state, thus leaving the financially beleaguered City to pay the remaining $6.25 billion. He also added that the City was spending $427 million that year for educating the handicapped, of which $35 million was contributed by the federal goverment, $71 million by the state, and the remaining $221 million was paid for by local sources. Koch ended his address by calling for a new policy whereby no federal or state program would be permitted to mandate service by cities unless adequate funds were provided to pay for them. [70]

Throughout the remainder of the school year, the mandate issue would receive considerable attention at the local level, becoming the subject of news stories, editorials, and speeches of protest by public officials. An editorial by WCBS-TV, aired in late June, is a case in point. While acknowledging the need for more and better services for the handicapped, the editorial attacked the Congress, which "has not picked up the tab for the very expensive education it has required." [71] These protestations about costs did not mitigate the fact that there were literally thousands of handicapped children throughout the City who still were not receiving adequate educational services to which they were both morally and legally entitled. Nor, despite their consternation, did they weaken the intent of the federal courts.

On June 30th, the United States Federal District Court in Riley v. Ambach handed down a decision concerning eighteen learning-disabled children in nine Long Island school districts. [72] While the case did not directly involve New York City, the implications were quite significant. At issue was the State's criteria for the identification of children who are categorized as "learning-disabled." Under the procedure, a student would be considered learning-disabled if there were a fifty percent discrepancy between expected and actual achievement levels at a particular grade. Plaintiffs argued that the 50% rule was too restrictive and inconsistent with federal standards. They testified that the implementation of the 50% rule caused the number of children in the state receiving services as learning-disabled to drop from 28,172 to 12,167 over one year. Deciding in favor of the plaintiffs, Judge Charles P. Sifton found that "the use of the 50% standard interferes with the proper identification of learning-disabled children." [73]

The decision stood to have a considerable impact upon the City, broadening the population of children legally entitled to special education services and contributing further to the large budget deficit. As might be expected, Mayor Koch denounced the decision as "simply another foolish mandate." [74] He warned that the City might join the State as an amicus in an anticipated appeal of the decision. Koch then let loose with his own analysis of the local situation, reminding his public and the Judge that the budgetary situation would negatively impact other local services,

> There's just a limited pot of money for the city...If I were the judge, I would ask myself, "Where will they have to take it from? From nonhandicapped children? From police? From firemen?"...This is ridiculous. It can't go on this way. This country, every city, every county, is fed up with mandates. [75]

In mid-July, the Chancellor's Office completed an in-depth study on the projected costs of instructional and related services in special education that were expected to result from an attempt to comply with P.L. 94-142 and the Jose P. mandates over the next three years. Based on the existing referral rate (then 3500 per month), the report projected a register increase that would amount to 91,732 in June of 1981; 105,176 in June of 1982; and 116,668 in June of 1983.[76] While these growth figures were dramatic from a local perspective, they were consistent with a nationwide trend that began with the passage of P.L. 94-142. In fact, from a national perspective, the percentage of the total student population in New York in 1980 (7.5%) receiving special education services was rather low. A survey conducted by the National School Boards Association the year before found that in 261 school districts of various sizes throughout the country, special education enrollment averaged 8.6%.[77] In districts of 25,000 pupils or more, the average enrollment was 9%. A preliminary study from the U.S. Office of Education revealed that 8.9% of the total American public school population was receiving special education services in the 1979-1980 school year.[78]

To these national surveys, the Chancellor's Office added its own, which focused on twenty-two large urban school systems. Special education enrollment in these cities ranged from 4.2% in Detroit to 18.4% in Boston. When considered in the context of the entire group, New York's 7.5% enrollment rate in 1980 came out to be the fourth lowest. (See Illustration IV-3.) If the projected rate of growth in New York were valid, the portion of children receiving special education services by 1983 would be 13.3%. Given the continued rise of special education enrollments around the country, this percentage would still be consistent with the national norm. However, when the 1980 staff-to-pupil ratios were applied to the register projections for 1981 through 1983, the resulting cost figures appeared overwhelming. Costs within the Division of Special Education would rise from $311,689,582 in 1981, to $361,583,297 in 1983. (See Illustration IV-4.) When fringe benefits, contract bus services, and inflationary costs were added to these figures, the real amount in spending would grow

ILLUSTRATION IV-3

SPECIAL EDUCATION POPULATION IN MAJOR U.S. CITIES

City	Percent of Public School Enrollment
Boston	18.4
Buffalo	15.2
Baltimore	14.9
Pittsburgh	14.7*
Philadelphia	12.4
Milwaukee	12.0 (estimate)
Chicago	11.7
Minneapolis	11.4
Newark	11.0 (estimate)
St. Louis	10.4
Cincinnati	9.8*
Denver	9.7*
Columbus	9.6
Houston	9.6*
Indianapolis	8.4*
Los Angeles	8.3
Dallas	7.8*
Miami (Dade County)	7.7
New York City	7.5 (as of 4/30/80)
San Diego	7.3*
Portland	6.4
Detroit	4.2

*Figures marked with an asterisk are for school year 1978-79; all others are for school 1979-80.

Source: "Costs of Compliance," op. cit.

between 1981 and 1983 from $510,963,769 to $668,781,191. (See Illustration IV-5.)

As the Chancellor's Office was in the process of completing its cost projections, other officials around the city and state concerned with the rising expenditures in special education began to conduct their own inquiries. On August 19th, Macchiarola received a letter from Comer S. Coppie, Executive Director of the State Financial Control Board. The letter expressed "serious concerns" regarding "the impact of federal mandates and recent judicial determinations on the Board of Education Budget and the City's Financial Plan."[79] Enclosed was a seventy-seven-page draft report which Coppie was planning to release after having received a reaction from the Chancellor's Office.

The FCB report noted that the City was facing a $1 billion budget deficit for the 1982 fiscal year, the year in which it was legally bound to have a balanced budget. Focusing on the "acute impact" which the special education program had on the City's financial condition, the report explained that $98 million in projected cost savings within the school budget would be more than offset by the rising expenditures in special education.[80] The FCB document criticized the semi-autonomous reporting arrangement enjoyed by the school system and demanded more external controls. It called the cost ceiling projected in the City financial plan "unrealistically low." It expressed concern with the potential impact of the recent Riley v. Ambach decision, if it were not successfully appealed. Finally, the FCB report included a strong attack on the management of the Division of Special Education, which it claimed had a direct bearing on the current financial crisis,

> Instructional programs for handicapped students have been organized and administered in such a way as to confound any rational decision making process...

ILLUSTRATION IV-4

PROJECTED COSTS FOR THE DIVISION OF SPECIAL EDUCATION

	FY 1981 Adopted Budget	FY 1982	FY 1983
Instructional and Related Services	$209,571,827	$228,788,781	$244,081,818
Office of Instructional Programs and Services-Administration	5,712,607	5,712,607	5,712,607
Office of Student Support Services	42,501,866	49,123,228	50,009,412
Office of Finance and Management	3,246,225	3,246,225	3,246,225
Non-Public School Tuition	31,295,000	35,714,864	39,171,178
Other	19,362,057	19,362,057	19,362,057
TOTAL (FY 1981 Dollars)	$311,689,582	$341,947,762	$361,583,297
TOTAL (7% Annual Inflation Factor)	$311,689,582	$365,884,105	$413,976,717

Source: "Costs of Compliance," op. cit.

ILLUSTRATION IV-5

PROJECTED COSTS FOR SERVICES TO THE SPECIAL EDUCATION POPULATION

CATEGORY	FY 1981	FY 1982	FY 1983
DSE	$311,689,582	$341,947,762	$361,583,297
Fringe Benefits	95,176,957	104,838,427	110,867,923
Contract Bus Service	104,097,230	108,465,734	111,688,173
Total Cost	$510,963,769	$555,251,923	$584,139,393
Total Cost with 7% Annual Inflation Factor	$510,963,769	$594,119,558	$668,781,191

Source: "Costs of Compliance," op. cit.

> In summary, the historical development of the special education program has produced an archaic programmatic and management structure. As a result, the Division of Special Education has been unable to effectively manage the rapid growth of enrollment resulting from recent court decisions.[81]

As school was about to open in September, City Comptroller Harrison J. Goldin began another investigation of special education, holding hearings at the Board of Estimate Chambers at City Hall. Among those to appear at the hearings would be Mayor Edward Koch, Council President Carol Bellamy, Chancellor Frank Macchiarola, union leader Albert Shanker, and Board of Education President Joseph Barkan. A common theme to emerge from two days of well-publicized testimony was the unfair burden of nonsupported federal mandates. Koch described the legislative and judicial mandates as "classic examples of well-intentioned intervention which is insensitive to local needs and local fiscal conditions."[82] Carol Bellamy warned, "And in our desire to redress the unequal treatment of handicapped students, we may end up dismantling what is left of our public education system."[83] She also urged the Division of Special Education to "put its house in order." Answering his own question as to whether the City could simultaneously assure a decent education for all children and balance its budget, Albert Shanker shouted, "I don't believe it can be done."[84]

Macchiarola used the hearings as an opportunity to describe the changes that were going on in special education in terms of mainstreaming opportunities, related services, and management reforms. He discussed "Special Education in Transition" and its relationship to the law. He presented data from his recent report on enrollment and cost projections and explained it in terms of a nationwide context. The Chancellor also registered his agreement with the emerging theme of the day, the need for more federal support. But beyond that theme, his message was quite different from those who had preceded him to the podium. He pledged,

> We are committed to provide direct and support services to children with handicapping conditions which are both required by law, and morally right in themselves; doing so in the knowledge that the costs must be borne by New York City taxpayers with insufficient help from Washington and New York State.[85]

Within a few days after his testimony at City Hall, Macchiarola sent off a response to Comer Coppie regarding the FCB report that had been prepared. The Chancellor's reaction to the state document was highly critical. He held that data in the draft report had been inaccurate, untimely, and unconfirmed. He stated that the analysis of management practices within the Division of Special Education "addresses an organization and system which no longer exists."[86] In October, the State Control Board released a study that contained both the FCB report and the Chancellor's response. In the meantime, the City Corporation Council joined the State Commissioner of Education as an amicus curia in an appeal of Judge Sifton's decision in Riley v. Ambach.

In February of 1981, the Educational Priorities Panel released a report on special education funding which documented the inequities which local officials had been claiming all along. Subtitled "A Story of Broken Promises," the report concluded that "the federal government has not fulfilled its funding commitments."[87] At issue here was not whether the federal govement would pay for all the costs encumbered by local districts as a result of Public Law 94-142. Rather, the concern was the difference between the level of funding authorized by Congress in the law, and the amount of federal monies spent. Congress had appropriated funding on a rising scale that would increase from 5% of the national costs for special education in 1978 to 40% in 1982. By

1981, the national commitment had not gone beyond 12%. (See Illustration IV-6.) In New York City, this difference could be translated into a loss of $20 million in federal support. Under that existing arrangement, the City was paying for 59% of the special education expenditures, while the federal contribution amounted to a mere 8%.[88] The remainder was paid by the state.

ILLUSTRATION IV-6

FEDERAL EXPENDITURES FOR SPECIAL EDUCATION (NATIONALLY)

	Authorization for PL 94-142	
Federal Fiscal Year	Dollars Authorized	% National Average Expenditures
1978	$ 387 million	5%
1979	$ 566 million	10%
1980	$ 1.2 billion	20%
1981	$ 2.12 billion	30%
1982	$ 3.16 billion	40%

	Appropriations for PL 94-142	
Federal Fiscal Year	$ Actually Appropriated	% National Average Expenditures
1978	$ 387 million	5% (fully funded)
1979	$ 566 million	10% (fully funded)
1980	$ 804 million	12% (instead of 20%)
1981	$ 862 million	12% (instead of 30%)
1982	Unknown	Unknown

Source: "Special Education Funding: A Story of Broken Promises," op. cit.

The EPP report did not reserve any kind words for the State's role in special education funding. It included an analysis of the new state aid formula that went into effect in 1980-81. It found that while the new state allocation had increased by $12 million (or 10%) over the previous year, it actually provided fewer dollars per pupil and $34 million less than the old formula would have provided. As a result, the City, which was a codefendant with the State, had to increase its spending by 47% to meet the costs of mandated services.[89]

COURT INTERVENTION: EDUCATIONAL REFORM AND ORGANIZATIONAL CHANGE

Compliance with the court order would require significant changes in the way that the Division of Special Education was managed and organized. In organizational terms, educating children in the least restrictive environment meant that an entirely new service delivery structure had to be designed. It meant redefining the role of regular education teachers. It meant the certification of a new generic teacher's license for special education personnel who had been trained to work with more restrictive categories of children defined by handicapping condition. All this would have to be supported by training and retraining. All this would have to be done while the Division was going through a period of rapid growth. All this would have to be imposed on a bureaucracy which was deeply entrenched in the ways of the past and resistant to change.

Implementing the court order would become an intricate process. It would be carried out under the supervision of the Special Master and with the involvement of the plaintiffs. Special Master Marvin Frankel sought to define his role during the implementation phase in very much the same manner that he cast it during the negotiation of the original court order and judgment. He would urge the plaintiffs and the defendants to work out their differences. When this was difficult, he would bring them together and attempt to effect a compromise. He would, as one party in the case described it, "lubricate the negotiation process."[90] After a set of negotiations on a particular issue was completed, Frankel would send his recommendations to Judge Nickerson in the form of a Special Master's Report. If a compromise could not be reached, he would make recommendations on the basis of his own analysis of the issues and the facts. After receiving a report from the Master, the Judge would then give the plaintiffs and defendants an opportunity to submit affidavits outlining their own positions on the case. He would then issue an order. In most cases, the Judge's order was consistent with the recommendations of the Special Master.

The manner in which the court defined its role in this case was a rather peculiar one. It sought to assume as inactive a role as possible. It served as an intervenor of last resort. If anything, Jose P. was a case of plaintiff intervention carried out under the auspices of a court order and judgment. The relationship between the plaintiffs and the defendants under this arrangement was a delicate and changing one. Both parties wanted compliance with the law. Both wanted to be cooperative. But what constituted compliance? When one gets to the implementation stage of a court order, compliance is not clearly defined by the law. It is negotiated. It becomes a question of settling details. And in an organization of significant size, administrative details are numerous and intricate. These details would raise more philosophical questions on the process of intervention. At what point could it be said that the plaintiffs had overstepped their bounds? At what point would they be infringing on managerial perogatives? Who really knew? One attorney for the defendants explained the issues in a rather inconclusive manner, which is indicative of the problems inherent in the arrangement worked out and the mixed sympathies of the parties,

> To a large measure, our relationship with the plaintiffs has been cooperative. They have been willing to compromise. At times, however, they have attempted to intrude into areas that should have been left up to management discretion. On the other hand, they have been dealing with an institution that has a poor track record. They sometimes have excess caution. They don't trust that the Board of Education will be able to do what it should do. Because of their intervention, the outcome has been very much more favorable to kids.[91]

A major requirement outlined under the Jose P. order and Jerry Gross' special education plan was the establishment of School-Based Support Teams (SBST's) for evaluation, placement, and service delivery at the school level. These teams were to be phased-in initially in three experimental community school districts (Districts 12, 15, 31). The phase-in process was to be monitored by the Office of Children with Handicapping Conditions from the State Education Department. The first monitoring report was completed in April of 1980. The findings contained within this early evaluation would touch on some deep-seated problems that would plague the Administration throughout the implementation process. The report began with words of praise for the overall concepts and goals of the SBST's as they were outlined in "Special Education in Transition." It identified several "major strengths" that were found in places where the plan was well implemented. These included more meaningful evaluations and placements, an emphasis on instructional and behavioral goals rather than labeling or categorization, a higher level of parent participation, and more involvement of school principals in special education. Unfortunately, these positive outcomes were found to be the exception rather than the rule in the three pilot districts.

The general conclusion of the evaluation stated that "problem areas appear to outweigh the strengths and may undermine the success of further efforts if not resolved." [92] Among the major problems uncovered were shortages of personnel. These included evaluation personnel, resource room teachers, bilingual staff and related service personnel. The fact was that the system was not hiring staff at a fast enough pace to either deal with the growing evaluation backlog or provide adequate services for children once they entered into the system. The other major problem was organizational. Gross was attempting to impose a new structure on the Division. This structure would be mediated by newly created regional offices which would act as intermediaries between the central administration and the districts. It would assign evaluation and placement responsibilities once belonging to the districts to the newly created SBST's. And it would all be done quickly. That was the law. That was the mandate. That was what the seven-member Board of Education wanted. Needless to say, there was confusion; confusion about responsibility, authority, and lines of communication. As the evaluation report stated, "accountability seems fuzzy." [93]

In June, the Division of Special Education began to work with the City Board of Examiners to develop a new generic teacher's license. It was not proposing the elimination of all categorical licenses, but what was a two-tier, broad-banded approach to licensing that would provide the system with teachers who could work with a larger, more integrated variety of students. These licenses had to be consistent with state law and the structure of university teacher education programs, the underlying philosophies of which predated Public Law 94-142. At about the same time, the Division began to administer recertification exams for regular education teachers who had been laid off because of the fiscal crisis and could be rechannelled into special education. Added to these efforts was a large-scale recruitment campaign which reached out through the universities, the media, and non-English dominant communities.

By the fall of 1980, the "January" and "April" Plans, which were supposed to have been submitted to the Court by the defendants on the respective said dates, were still under negotiation. As the parties to the negotiations became more involved in details, the details appeared to become more significant and more controversial. The major remaining issue which detained agreement on the January Plan, now nearly a year late, was that concerning preventive services. Preventive services include any service or activity which, to a greater or lesser degree, can be said to prevent a nonspecial education student from being classified as having a handicapping condition. All agreed that the judgment required such services. The point in question concerned to whom they were entitled. The plaintiffs argued that all children within the school system were entitled to such preventive services. The defendants held that the judgment required such services only for those children in the plaintiff class, i.e., those who had been referred for evaluation. The plaintiffs pointed out that by definition, preventive services were designed for the benefit of nonhandicapped children, and therefore, all nonhandicapped students should be included. They also demonstrated that the defendants had originally agreed to do so in an earlier draft of the Plan, which was now in its sixth revision.

The defendants argued that there is no federal or state law which requires such preventive services to nonhandicapped students. They said that the plaintiffs' interpretation of the judgment would extend the mandate to every student in the school system. They proposed to deliver preventive services to "nonclass" members only after other mandates in the judgment were met, i.e., timely evaluations, related services to handicapped children, preventive services to postreferral children. They did not want to be legally obliged to such services before then, and they wanted a paragraph included in the approved plan which stated so.

After several hearings and much negotiation, the Special Master submitted his report and recommendations to the Court on November 8th. He made it clear that at issue here was not the law, but the requirements of the judgment. He reviewed the text of "Special Education in Transition," which was incorporated in the judgment and had a strong recommendation for broad-based preventive services. He noted that it is "interesting, if not decisive," that previous versions of the January Plan agreed to by the defendants prescribed preventive services for all children. He explained that upon further deliberations, the defendants concluded that "budgetary constraints required postponement of the projected SBST services to "nonhandicapped children." [94] Frankel then recommended that the proposed January Plan be approved by the Court without the qualifying paragraph requested by the defendants.

The January Plan recommended to the Court was 75 pages long, and it included a 185-page appendix. An even larger April Plan was still under negotiation by the parties. While the Judge was deliberating over the recommended January Plan, more general concern with the overall implementation of the court order was generated in the local press. Within the past year, the number of children identified as needing special education services had increased from

50,000 to 72,000 students. However, the number of children on waiting lists still amounted to over 7000, and the Division was still in need of an additional 1000 personnel. [95]

On January 8th, 1981, a year after its original due date, Judge Eugene Nickerson approved the January Plan that had been submitted to the Court. However, contrary to the recommendation of the Special Master, Nickerson ordered that the qualifying paragraph sought by the defendants regarding preventive services be incorporated in the final document. Finding that the defendants had made a "good faith effort to advance towards the objectives set forth in the judgment," [96] the Judge ruled that the City district would not be required to provide preventive services on a prereferral basis until the other major mandates of the judgment had been carried out.

Within a few days after the approval of the January Plan, debate began among the parties concerning the provisions of the long overdue April Plan. The April Plan was to set forth the concrete details for implementing the "continuum of services" defined in the January Plan. This continuum, designed to accommodate a range of student needs going from a least restrictive environment to self-contained classes, was to have been implemented by February 2nd, 1981. Now, given the delays involved in reaching agreement on both plans, the defendants were proposing that the implementation date be postponed. They were requesting that the continuum of service be put in operation on a pilot basis in nine or ten districts in the fall of 1981, and that full implementation citywide be postponed until September of 1982. The plaintiffs, recognizing the complexity of the issues to be settled, did not disagree with the idea of a phased-in implementation or the final dates suggested by the defendants. What they wanted, however, was a detailed implementation and monitoring plan which would set down more specific deadlines at each stage of the implementation process. They wanted established a formal institutional mechanism for assuring that any differences arising during the course of these deadlines could be promptly resolved. The defendants objected to these demands, claiming that the plaintiffs were using the April Plan as a vehicle for modifying the judgment. They accused the plaintiffs of trying to extend the litigation and their monitoring role for an additional two years.

As negotiations regarding the April Plan proceeded, the relationship between the leadership of the Special Education Division and the plaintiffs became more strained. The members of the Board of Education were becoming increasingly dissatisfied with the progress made in resolving the Court mandate. All this was being played out before the backdrop of a financial crisis in the City, to which the special education budget was a major contributing factor. On March 10th, a news story broke in the local press that another major shake-up was taking place within the Division of Special Education. The Chancellor had asked for the resignations of twenty-four top-level officials, and Jerry Gross had decided to resign. Bill Rojas, the Chancellor's executive assistant who had worked as Macchiarola's liaison with the Division, was "temporarily" assigned there to oversee its daily operations. Christy Cugini, deputy superintendent in Community School District 31, was assigned Acting Executive Director. On the subject of Jerry Gross' tenure and departure, Carol Brownell, a press assistant for the Chancellor and the Board of Education, was quoted in the New York Times as saying,

> He made a tremendous impact here because he provided the conceptual framework for handling the needs of special education students. But unhappiness developed over his management capacity and his team's ability to put in place the programs and plans we had all agreed to. The Division is a very large enterprise with a very big budget, and we need a very strong team in there to handle it.[97]

In fact, Gross had not actually been fired. The Chancellor had asked for the resignations of a large part of the top management structure in the Division, but he offered to work with Gross. The problem was that by March of 1981, Gross' relationship with the members of the Board of Education had hit rock bottom. They, who had always been ambivalent about his court-ordered plan, were discontent with its outcomes. He, who had seen himself as a major advocate of special education, accused the Board of being meddlesome, petty, and overly political. As he explained it,

> The Board was generally unhappy that we had a Court case. They were distressed. They felt that they were losing control, that they were not making decisions.
>
> The first year I was the new kid on the block. They were good. After that, when I started firing and demoting people who were dear to them, they became more involved. They continued to ask inane petty questions. This was very time-consuming. It took away from my ability to get things done.[98]

Gross also felt that he had been unfairly blamed for the overspent education budget, which had been a major source of contention between school officials and the City. He pointed out that budget decisions were really made by the Deputy Chancellor, but that when things blew apart, he assumed a large share of the responsibility,

> (Deputy Chancellor) Halverson blamed me because we overspent. He told me to do it. I was clearly told by him when I started, "you run the program and hire the staff. I will find the money for you." When expenditures showed up in our budget, I was put under immediate freeze for a year.[99]

While Gross was under pressure to resign from the Board, the final decision to do so was his. He left frustrated with the situation that had developed, and disconcerted with the seven-member Board of Education to whom he was ultimately accountable,

> Macchiarola offered to go to the Board of Education to make a case for my past accomplishments and tenure. I refused. I don't like to explain on such a low level what I am doing. I can't go with hat in hand. If they can't recognize my accomplishments, the hell with them. 100

In the end, the question remained as to whether Gross had ever managed to effectively break through the old structure of the bureaucracy with which he had to contend. Gross had a fine reputation as a special educator and a wealth of experience, but he had never dealt with an organization so large as the one at Livingston Street. The Special Education Division was the most entrenched and difficult part of that bureaucracy, and many believed that Gross and his staff were simply not prepared for it. As one attorney in the case explained it,

> Gross had a paper staff. It seemed like he had an enormous organization. Realistically, he had no control over the bureaucrats. They were tenured. They had been there for years. They had bigger offices than he did. He had a few executive assistants who were overwhelmed. They hadn't realized what they were getting into when they got here. The managerial job was enormous. 101

NEGOTIATING COMPLIANCE: THE CONTINUING PROCESS

Two days after Gross' resignation, the Superintendents Conference was held at Harrison House in Glen Cove. While the major topic of discussion at the three-day meeting was Promotional Policy, the agenda allowed considerable time for other subjects that were emerging as concerns within the community school districts. Key among these was special education. With the creation of six regional offices, the development of School-Based Support Teams, and the emergence of a new philosophy of instruction, the districts were being required to adapt to a rapidly changing model for service delivery. Most

Superintendents did not oppose the goals underlying the mandated reforms, but many were not pleased with the way the changes were being implemented. Their Committee on Special Education had prepared an analysis of the situation, and its chairman, Superintendent Marvin Aaron, would present a set of recommendations to the Chancellor, his staff, and top officials from the Division of Special Education.

The Superintendents' proposal was far-reaching. What it called for was the phasing-in of a three-year plan whereby the districts would assume responsibility for special education. Under this plan, the districts would treat handicapped children as they did all others. The discussion which emerged from this proposal had enormous significance for a number of reasons. On the one hand, it was philosophically consistent with the legal mandate; on the other, it defied a ten-year history of decentralization in New York City. Historically, special education had been a central function. Special education staff were assigned and supervised by the central Division. They were not even on the district budget. Its children were not usually perceived as part of the district school population. Many district personnel, unequipped to deal with handicapped children, preferred it that way. Now, the Superintendents wanted to assume a large share of the responsibility for educating these children.

Also significant at this time was the reaction to the proposal by the Chancellor and school officials from the central administration. Customarily, Livingston Street would guard special education as part of its balliwick. That was the way of the bureaucracy, for special education meant positions, and it meant dollars. Here nobody objected. They just listened. When the meeting adjourned, Macchiarola asked Alan Gartner, who had organized the conference for him, to follow up on the recommendations of the Superintendents. What became known as the "Harrison House Proposal" would emerge as a significant part of the future dialogue on special education in months to come.

On March 27th, City Comptroller Harrision Goldin released a report on special education which was drafted by his staff on the basis of the hearings that had been held in September.[102] The report repeated the major themes that had been enunciated in the testimonies of various local luminaries, emphasizing once more how the special education budget would negatively impact regular education services in the City. To no one's surprise, the report included a demand for more federal and state aid, and a request for state legislation that would establish clear lines of accountability over the currently "autonomous" Board of Education. It also suggested that parents of handicapped children be given more options for private school placements at public expense, and that the school system should contract out more special education services. It concluded, however, with the recommendation that the efficacy of delabeling children should be reconsidered.

On the next day, the Chancellor delivered a major policy address at Columbia University Law School where he reconfirmed his commitment to the special education mandate and defended the courts as protectors of individual rights. He singled out for criticism local officials who had directed public opinion against the special education laws and adopted the slogan, "get the government off our backs." He warned,

> Agencies and their officials cannot be permitted to excuse poor performance of their organizations on the basis of overregulation or "mandates without money"...
>
> ...entitlements for the handicapped are usually singled out as oppressive. To hear some of our leaders speak, you would believe that handicapped children relish their handicapping conditions. Many in our school community have been egged on to protest what children with handicapping conditions receive.[103]

As Macchiarola was speaking before his fellow alumni on the Columbia campus, lawyers for the school system and the plaintiffs were still negotiating the details of the long-overdue April Plan. The plaintiffs were concerned that less than 25% of the 91 occupational and 91 physical therapists needed in the current year had been hired. They wanted the Court to set a deadline. The defendants resisted. There was also disagreement concerning the criteria for mainstreaming handicapped students during lunch, assemblies, and other special events. The plaintiffs wanted exceptions to the mainstreaming rule provided on a short-term basis in a child's individualized education program. The defendants wanted to set down a more general policy. They negotiated throughout April.

In the meantime, the public debate over the reasonableness of the mandate continued. On April 28th, for example, a local radio editorial urged the Chancellor to "take immediate steps" to reduce the growing backlog of children awaiting services in special education. It argued, "Lack of money cannot be blamed for this deplorable situation." [104] Two days later, a local newspaper editorial appeared entitled, "Special Education Costs Race Out of Control." It asserted, "Tragically, New York City's public schools are being brought to their knees by the ballooning costs of educating the handicapped." [105]

With deliberations between the plaintiffs and the defendants continuing, the points of difference were beginning to appear more extreme. Now at issue was the applicability of the administrative order handed down by former Commissioner Ewald Nyquist in the Riley Reid proceedings of 1977. It may be recalled that under its provisions, children whose name appeared on a waiting list without a satisfactory public placement for more than sixty days were entitled to seek a private placement at public expense. This order had been in effect since September of 1977. On December 29th, 1981, the Executive Director of the Division of Special Education issued a memorandum stating that the Commission had recently determined that the provisions of the Riley Reid decision were applicable only to those children who were awaiting evaluation or placement prior to September 2nd, 1977. The memorandum stated that no further applications for private school funding will be accepted solely on the basis of untimeliness and that it would be necessary to review all students funded for private school placement subsequent to September 2nd, 1977. At that point, the defendants also refused to distribute a parents' rights handbook that had been in use because they claimed that it incorrectly stated the grounds for private placement.

The plaintiffs assailed the sudden freeze on a policy that had been in practice for more than three years, and demanded that the distribution of the parents' rights handbook, which had been required by the judgment, be resumed. In early May, the plaintiffs initiated new proceedings seeking further relief, in the form of special summer programs, for students who had been illegally denied service (more than 60 days) during the 1981 school year. That same month, the Special Master issued two reports to the Court concerning a finding of facts and his recommended resolutions of the issues at hand. He found that the December 29th memorandum of the defendants was "conceived in faulty reasoning" and altered the generally applicable requirements of the judgment. Thus, he recommended that the defendants be ordered to distribute a new memorandum rescinding the December 29th document, and to resume distribution of the parents' rights handbook. With regard to the summer program relief sought, the Master was less sympathetic with the plaintiffs. He found that such action was not required by the judgment, that the defendants had done their best with the available resources, and that there wasn't sufficient time to install such a program. Thus, he recommended to the Court that the plaintiffs' request be denied.

In June, the recommendations of the Special Master on the preceding issues were approved by Judge Nickerson, and were incorporated within subsequent orders. That same month, the Special Master submitted recommendations for the resolution of outstanding issues with regard to the "April" Plan, then more than a year overdue. These recommendations would also be accepted by the Court. However, this only marked the beginning of more furious battles over compliance, and criticisms directed at the school system for its failure to adequately implement the mandate. In July, a report was released by the Educational Priorities Panel (EPP). While put forward as a budget analysis, the EPP document was in fact a penetrating evaluation of the organization and practices of the Division of Special Education. The report attacked the "patchwork structure" of the Division where, it claimed, "levels of authority are unclear and funding responsibilities are confusing."[106] A particular emphasis was placed on the lack of integration between the central administration, the regional offices, the districts, and the school level. The report recommended paring down the administrative structure and the establishment of clear lines of supervision and authority. It also called for more timely recruitment efforts and the licensing of personnel who were needed to deal with the backlog in student placements.

On July 27th, the plaintiffs and amici submitted new papers to the Court detailing outstanding issues of compliance with the judgment and seeking relief.[107] They cited an April, 1981 report by the Division of Special Education which showed that 2970 children had been illegally waiting more than thirty days to be evaluated, and 4152 additional students were waiting more than sixty days to be placed. By July, these lists had grown even longer. With regard to mainstreaming opportunities, it was shown that only 715 of the 970 schools in the City had resource rooms in operation. Lack of compliance in this area was particularly problematic in the high schools, where only 54 out of 110 had such facilities in place. In fact, the resource room situation had worsened over recent months, with the number of children awaiting placement over sixty days increasing from 2062 in January, to 2319 in February, to 2341 in March, and finally back to 2319 in April. In terms of related services, the paper submitted to the court held that as of May, 3954 children were not being provided with psychological services, and an additional 3165 were being denied social work services, although each was called for under the students' individual education plans. The plaintiffs and amici also argued that the defendants had failed to make "maximum reasonable efforts" to ensure that children of limited English proficiency are evaluated in their native language. They noted the indefinite postponement for the implementation of the continuum of services. They criticized the inadequate reporting systems within the Division, and its failure to develop an integrated information system for evaluation and placements.

It was all very clear now. The plaintiffs and amici had become frustrated with the rate of progress achieved by the Administration at Livingston Street. They had been fighting these battles for ten years. It was no longer a question of negotiation. They were now demanding further relief by the Court. Of course, the question remained how quickly the school Administration could be expected to move. In July, the Chancellor appointed the fourth Executive

Director to assume responsibility over the Division of Special Education in three years. The choice was Alan Gartner. Bill Rojas, who had been serving in an acting capacity since Gross' departure in March, was appointed Deputy Executive Director.

AFTERTHOUGHTS: ASSESSING THE OUTCOMES AND THE OPTIONS

Alan Gartner assumed office on August 1st, 1981. He was no newcomer to the Division. Gartner had been a member of the search committee that hired Jerry Gross. He had administered the special education training program that was mandated by the court under the Lora decree. In 1978, he had conducted the original evaluation of the Bronx Regional Organization. Upon his appointment Gartner, at the request of the Chancellor, was in the process of examining the feasibility of the "Harrision House Proposal" presented by the Superintendents at Glen Cove. The new Executive Director was in basic agreement with these ideas that had emerged from the districts. Prior to and during his academic career, Gartner had a history as a community advocate and was a strong proponent of decentralization. His own report on the Bronx Region had emphasized the importance of a significant district role in special education, if handicapped children were to be truly integrated into the mainstream.

Gartner began his tenure with a realistic understanding of the task before him, admitting, "The problem I face is whether I can manage this enterprise." [108] By August of 1981, the waiting list for evaluations and placements had reached 12,684. [109] Thus, many of the goals Gartner publicly identified for himself were dictated by the needs of the situation. They included the hiring of more teachers, the development of speedy and unbiased evaluation techniques, and the removal of architectural barriers in fifty-one more school buildings. To these goals Gartner added another, which was very distinctly his, and very much part of a new emerging philosophy in the Division: The good will, cooperation, and integration of the school districts.[110]

As school was about to open in September, the Chancellor delivered another major policy speech on special education. This time, the occasion was a national conference on "Social Policy and the Special Education Task of the 1980's," held at the Wingspread Conference Center in Racine, Wisconsin. As he had in the past, Macchiarola told his audience that the real issue of the eighties would remain "the right of the public to be served."[111] He once again endorsed the need for litigation and the importance of court mandates. However, he also reminded his colleagues, "The expectations of a few years ago have simply been hit by the reality of program formulation, implementation, and evaluation." Emphasizing the difference between policy formation and implementation, he explained, "The passage of legislation is really a mere statement of goals. The process of implementation is a more significant and challenging one, where unexpected problems emerge..." Macchiarola then went on to articulate a rather cogent argument on the limits of court intervention, which was indicative of his own past frustrations in New York and representative of a developing outlook for the future:

> Looking at our own court decree in the Jose P. case in New York, I believe strongly that the role of the courts becomes negative at the implementation stage. Having complicated decision making, and creating alternative channels of influence and accountability, it is highly likely that the courts, at the implementation stage, will actually work against what their intervention accomplished in the initial formulation of a commitment to the special student.[112]

That fall, a number of significant proceedings took place before the Special Master and the Court. A September monitoring report generated by the Special Education Division revealed growing backlogs in evaluation, placement, and related services that totaled 15,345.[113] At the same time, school officials were continuing to resist any remedies involving private placements at public expense. These circumstances drove the plaintiffs and amici to seek another court order sanctioning and requiring the continuation of the Riley Reid administrative provisions. Thereafter, the plaintiffs renewed a request that summer school programs be made available for those students who were being denied placement during the regular school year. In the meantime, a dispute broke out between the State defendants and the City defendants. It occurred when the Chancellor, concerned with the teacher shortage, requested permission to use alternative criteria for the licensing of special education personnel. The State Education Department refused. The plaintiffs and amici endorsed the Chancellor's request. And the disagreement was taken before the Special Master.

While the legal battles were being fought at various places, Alan Gartner was in the process of implementing some significant changes in the service delivery system housed at Livingston Street. By November, Gartner had worked out a rather far-reaching agreement with Nathan Quinones, the Executive Director of the High Schools Division. Under its terms, special education personnel at the secondary level were incorporated into the supervisory structure of the High Schools Division. This meant that special education teachers and supervisors in these schools were no longer a separate entity. They would report to the High School Superintendents, as did all other high school staff. More significantly, under this new arrangement, the special education personnel affected would be transferred into the High School Division budget. These changes were all made rather quietly. But their accomplishment was quite extraordinary, for they violated the cardinal rule of the bureaucracy: "Thou shalt protect thy turf." Gartner was giving away personnel and dollars to another Division, without a fight, at his own will.

The High Schools agreement was also significant in terms of the legal mandate. Now, handicapped students would be treated as high school students. They were no longer the clientele of another Division who happened to be using high school facilities. At that point, there appeared to be an obvious next step to take. Why not do the same for the elementary and middle grades? Why not incorporate special education students and budget into the districts? That would truly facilitate the goal of mainstreaming. However, such a second step would not be taken so easily. The central Board of Education had gone along with the first plan because it only involved shifting personnel from one central Division to another. In the end, nothing was lost. Transferring resources into the districts would be another matter. Such maneuvers constituted decentralization. They violated the precious boundaries of Livingston Street. They would be heartily opposed. All indications showed that both the Chancellor and Gartner were supportive of taking that important second step. But everyone knew that things had to proceed slowly and be handled gingerly. The plan was to approach the question managerially. It would not be dealt with as a major policy issue. As Gartner explained, "Frank did not want the Board of Education to vote on the issue. He wanted to keep it as an administrative matter."[114]

On November 18th, Gartner distributed to the district Superintendents a document called the "Harrison House RFP" (request for proposals). In it, he invited the Superintendents to submit proposals for participation in an experimental design for service delivery that would foster "close collaboration between the Division of Special Education and the community school districts."[115] From the proposals submitted, it was hoped that nine experimental districts would be chosen. The project was to build on the directions outlined in "Special Education in Transition" and "the initiatives begun at the Harrison House Conference." At the beginning of the document, Gartner formally recognized the continuing overall responsibility of the Chancellor and his Division for special education services. However, he then went on to outline a "design for improved administration of special education" that was unlike anything that had even before emerged from Livingston Street.

The Harrison House RFP outlined the distinct roles that would be divided between the experimental districts and the central Division. Each district would have a Supervisor of Special Education. While these Supervisors would remain on the central Division budget, they would be appointed by and report to the district Superintendents. Together the Superintendent and Supervisor would be responsible for overseeing all special education personnel serving in regional programs, and would be expected to assure that handicapped children and their teachers are integrated within the full range of activities. While the OTPS (other than personnel services) budget for special education would be distributed among the districts by the central Division, local expenditure plans for each allotment would be determined by the districts. The Division would retain responsibility for citywide low incidence programs, and would supervise the work of the Committees on the Handicapped. It would monitor and provide support in the areas of curriculum development, technical assistance, and training. Central officials would also continue to work directly with outside agencies such as the State Education Department, the Office of Management and Budget, and the state and federal courts.

There was a curious twist to the way the Administration's position was developing with regard to special education. The Chancellor's initiatives in terms of Promotional Policy had been perceived by some observers as an assault upon the power of the community school districts. They saw Macchiarola, a former school board president, as becoming less sympathetic towards decentralization subsequent to his arrival at Livingston Street. Now, the Administration appeared to be supporting an idea which called for further decentralization. Were these positions inconsistent? Alan Gartner, another advocate of decentralization, says no. He portrays the Administration's posture in terms of a widening discourse on the centralization-decentralization debate:

> People have always assumed that you can either have strong districts or a strong Chancellor. They saw it as a zero-sum game, where strength on one end would have to mean weakness in the other. Frank doesn't believe this. Frank wants both strong districts and a strong Chancellor. He will set standards. But he demands that they do serious things in terms of service. [116]

The Harrison House RFP was sent to the districts with neither the prior approval nor knowledge of the central Board of Education. Needless to say, when the news reached the eleventh floor at Livingston Street, the members of the Board were not very pleased with what had happened or how it had been done. They demanded an explanation, in writing. Gartner, who was the author of the RFP, was elected to draft the explanatory response. In doing so, he criticized the current structure of special education services for its anachronistic nature, lack of clarity or cohesion, and the limited involvement of community school districts. [117] He described his own proposal in great depth, but it was his explanation of what the plan did not represent that addressed the major concerns of the Board members:

> Responsibility for education of children with handicapping conditions remains a central one - the Board's, its Chancellor and D.S.E. This is not decentralization. No funds are to be transferred to district budgets. No staff will be on district payrolls.[118]

After several tense meetings with the Board, Gartner finally received permission to go ahead with the experimental structure. However, the scope of the project was reduced from nine districts to five districts.

On December 21st, the Special Master issued another report to the Court. He recommended that the plaintiffs' most recent request for a summer school program not be granted, but that they be "encouraged to exploit the Riley Reid procedure, both as a means of placing unserved children, and as an encouragement for the defendants to extend themselves some more."[119] On January 5th, 1982, Judge Nickerson issued a Memorandum and Order supporting the Master's recommendations and also ordered the defendants to submit within ten days a "detailed and effective plan" for the elimination of the waiting lists. The latter part of the order evoked an angry response from Board President Joseph Barkan, who threatened to "appeal the whole thing."[120] On the following day, the Board contracted with the private law firm of Paul, Weiss, Rifkind, Wharton, and Garrison to act as consultants on the case. The Board members had never been enthusiastic about the original Jose P. judgment. Now, as things started to approach the breaking point, they were prepared to explore all the options. And they enlisted the best legal advice they could find to do so.

It is not difficult to understand the Board members' frustration. Over the past three years, they had been supportive of many changes within special education. They had unanimously approved "Special Education in Transition," and with it the regional plan and the dissolution of the bureaus. They had endorsed the establishment of School-Based Support Teams in order to maximize least-restrictive options for students and to facilitate wider participation of parents. Between 1978 and 1981, they witnessed a geometric growth of the Division and its service population. During this time, the number of children in special education increased from 52,829 to 90,186. [121] (See Illustration IV-7.) Children in resource rooms alone had increased from 204 to 18,919. These trends were reflected in an enormous expansion in the teaching staff. Between 1978 and 1981, the number of special education teachers increased from 5224 to 9447. [122] (See Illustration IV-8.) All this occurred when the Board was under severe political pressure to reduce its spending. Indeed, it can be said that the controversy over the special education budget was the primary cause behind attacks on the Board's political and managerial autonomy. Now, in order to comply with the legal mandate and its philosphy, their own Chancellor was instituting an experiment that could eventually compromise the Board's jurisdiction over its central resources. These events notwithstanding, the Board of Education was still being dragged into Court for noncompliance. The waiting list was still there to be dealt with.

On January 21st, representatives of the school system appeared before Judge Nickerson to submit their "Plan to Eliminate the Waiting List." Their "plan" included a short history of the Division's progress since the initial judgment and a listing of "constraints" on timely evaluation and placement. It outlined some "proposed measures" to be taken in order to improve the situation, but it included no specific goals or time tables. The most significant part of the paper submitted was a remarkable admission of doubt,

ILLUSTRATION IV-7

Number of Children Served in Special Education

Type of Class	School Years						
	1978 - 1979		1979 - 1980		1980 - 1981		1981 - 1982
	9/30	6/30	9/30	6/30	9/30	6/30	9/30
Resource Rooms	204	491	1,641	8,201	10,101[a]	15,799	18,919
All Others	49,496	55,831	56,306	60,202	56,870	65,360	66,767
Total	49,700	56,322	57,947	68,403	66,971	81,159	85,686
Private	3,129	3,129	4,048	4,048	4,483	4,483	4,500
Total	52,829	59,451	61,995	72,451	71,454	85,642	90,186

a - underestimates the actual number

Source: Report on Growth in the Division of Special Education: 1978-1981, op. cit.

ILLUSTRATION IV-8

Number of Teachers in Special Education

Type of Teacher	School Years				
	1978 - 79		1979 - 80	1980 - 81	1981 - 82
	9/30	6/30	6/30	6/30	9/30
Classroom-Field	5,161	5,844	7,224	7,642	8,373
Resource Rooms	63	147	213	857	1,074
Total	5,224	5,991	7,437	8,499	9,447

Source: Report on Growth in the Division of Special Education: 1978-1981, op. cit.

> The measures we propose here are sound, and we believe they will have the effect of reducing delays in evaluation and placement. We cannot, however, provide assurance that these steps will immediately eliminate evaluation and placement waiting lists, nor can we state with certainty precisely how much the waiting lists will be reduced as a result of this plan within a specific period of time. In light of future experiences, it may well be that the steps we outline here will require modification or even future abandonment.[123]

As school officials were presenting their "plan" to Judge Nickerson, Mayor Edward Koch was demanding that the Board reduce its special education budget by $38 million.[124] On the same day, the United States Court of Appeals was handing down another decision concerning the Jose P. case. At issue was an appeal by the State defendants to be released from sharing liability for any court fees with the City defendants that resulted from the latter's failure to eliminate the waiting lists. The Court unanimously rejected the State Education Department appeal. The appeal itself, however, was indicative of the worsening relationship that had developed between City and State school officials who began the case as codefendants.

On March 3rd, the Chancellor appeared before Judge Nickerson to present sworn testimony. Taking the previous arguments presented by school officials a step further, he built his case upon the idea that the litigation had become counterproductive to the original goals of the judgment. He criticized the preoccupation with the number and speed of placements as opposed to a concern for "appropriate education." Macchiarola also explained that the "state of the art" in special education is still developmental and in need of experiment, but that the constraints imposed by the judgment and the plaintiff do not allow such flexibility. He also cited the inadequate financial support by the federal government, and the lack of cooperation of the State Education Department.

While the Chancellor did not seek relief from the Court at this time, his testimony made it clear to the Court that he, as the members of his Board, had become dismayed with the scope of intervention that grew out of the original mandate.

SUMMARY COMMENTS

This case study on special education has ended in very much the same place where it began, with some serious doubts about the efficacy of alternative approaches to service delivery for the handicapped. Such uncertainty has been partly responsible for the debates that have emerged within the education profession and spilled over into the political realm. The larger political battles, however, are a more direct result of a general ambivalence on the part of national policy makers concerning public priorities. In one sense, we have come a long way, for we have recognized the educational rights of a minority that has historically been denied access to appropriate schooling. However, this rising national consciousness has not been matched by the level of resources that are needed to insure the very rights which have been recognized. Thus, the major part of the financial burden for educating the handicapped has fallen upon the local school districts.

Herein lies the major contributing factor to a set of cross pressures to which the school Administration at Livingston Street was subjected. While the legal mandate called for more and better services to handicapped children, municipal officials, troubled by shrinking financial resources, were demanding cutbacks within the school budget. In addition to financial restraints, the Administration, in its attempts to comply with the mandate, was required to deal with an entrenched and obstructive bureaucracy, an ambivalent school board, and a mildly supportive codefendant at the state level. Even as the Administration began to make inroads towards the integration of special education programs with regular programs at the local district level, the Board of Education, protective of its centralized programs and resources, emerged as a major defender of the status quo.

This case is a classic study of judicial intervention, and provides us with an opportunity to observe the role of the courts in the policy making process. Surely, that role appears to be a significant one, since it was through successful litigation that the education rights of the handicapped were first declared. Several years of successful litigation finally provided momentum to effect federal legislation, which in turn, propelled state legislative action and facilitated the litigation process. But at what point, we must ask, does judicial intervention become counterproductive? We have here not only a judicial declaration of rights, but also court, or more specifically, plaintiff intervention into school management. Thus, the issues become more complex. What began as a reform of educational policy, in fact grew into a major attempt at organizational and managerial change. One cannot blame the defendants for the aggressive role they played throughout the implementation process, for the truth of the matter was that the school Administration had failed to comply with the legal mandates in a timely manner. Whether or not the deadlines appearing within the judgment were reasonable to begin with, is another question.

As one observes this case in retrospect, there appears a basic lack of symmetry between the legal and educational systems which underlies the current policy debate over the education of the handicapped. There is more certainty about the legal entitlements concerning the education of the handicapped than there is about the educational principles behind those entitlements. There is more surety concerning the kinds of programs school systems are required to provide for handicapped children than there is concerning the techniques for their effective implementation. It can be said that the science of the law has moved at a more rapid pace than the science of instruction. And perhaps this explains the distance that remains between the two.

FOOTNOTES

1. On the history of federal action on behalf of the handicapped, see Erwin L. Levine and Elizabeth M. Wexler, P.L. 94-142, An Act of Congress (New York: Macmillan Publishing, 1981); Martin L. LaVor, "Federal Legislation for Exceptional Persons: A History," in Fredrick J. Weintraub et al., eds., Public Policy and the Education of Exceptional Children (Reston, Va.: The Council on Exceptional Children, 1976); Alan Abeson and Jeffrey Zettel, "The End of Quiet Revolution: The Education of All Handicapped Children Act of 1975," Exceptional Children (October, 1977); Scottie Higgins and Josephine Barrese, "The Changing Focus of Public Policy," Exceptional Children, 46 (January, 1979); Frederick J. Weintraub et al., eds., op. cit.

2. Lloyd M. Dunn, "Special Education for the Mildly Retarded - Is Much of It Justifiable?" Exceptional Children, 35 (September, 1968).

3. Charles S. Bullock and Joseph Stewart, "Second Generation Discrimination in American Schools," Policy Studies Journal, 7 (Winter, 1978).

4. Nicholas Hobbes, The Futures of Children (San Francisco: Jossey-Bass, 1975); James Gallagher, "The Special Education Contract for Mildly Handicapped Children," Exceptional Children, 38 (March, 1972); G. Orville Johnson, "Special Education for the Mentally Handicapped - Paradox," Exceptional Children, 29 (October, 1962); Maynard C. Reynolds, "Framework for Considering Some Issues in Special Education," Exceptional Children, 28 (March, 1962); Alan Abeson et al., A Primer on Due Process: Education Decisions For Handicapped Children (Reston, Va.: The Council for Exceptional Children, 1975).

5. For an overview of the legal issues, see Jack B. Weinstein, "Education of Exceptional Children," Creighton Law Review, 12 (1979); David Kirp, "Schools as Sorters: The Constitutional and Policy Implications of Student Classification," University of Pennsylvania Law Review, 75 (1973); Joan N. Alschuler, "Education for the Handicapped," Journal of Law and Education, 7 (October, 1978).

6. Hobson v. Hansen, 269 F. Supp. 401, 1967.

7. Diana v. State Board of Education, January 7, 1970.

8. Larry P. v. Riles, 343 F. Supp. 1360, (N.D. Ca. 1972).

9. Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 348 F. Supp. 279, (E.D. Pa. 1972).

10. Ibid.

11. Ibid.

12. Ibid.

13. Mill v. Board of Education, 348 F. Supp. 866, (D.D.C. 1972).

14. Among the groups active in the lobbying for passage were, the Council for Exceptional Children, United Cerebral Palsey, the American Speech and Hearing Association, the National Association for Retarded Children, the National Society for Autistic Children, the Council on Education of the Deaf, the National Easter Seal Society, the National Association of Mental Health, the Institute for Research on Exceptional Children, and the National Center for Law and the Handicapped.

15. Public Law 94-142, 94th Congress, S.6, November 29, 1975.

16. See, Note, "Enforcing the Right to an Appropriate Education: The Education for All Handicapped Children Act of 1975," Harvard Law Review, 92 (1979); Donald N. Bersoff and Elizabeth Veltman, "Public Law 94-142: Legal Implications for the Education of Handicapped Children," Journal of Research and Development in Education, 12 (Summer, 1979).

17. The actual authorizations defined included five percent in 1978, ten percent in 1979, twenty percent in 1980, thirty percent in 1981, and forty percent in 1982.

18. Erwin Hargrove, The Missing Link (Washington, D.C.: Urban Institute, 1975); Aaron Wildavsky and Jeffrey Pressman, Implementation (Berkeley: University of California Press, 1975); Eugene Bardach, The Implementation Game (Cambridge, Mass.: MIT Press, 1977); Paul Sabatier and David Mazmanian, "The Implementation of Public Policy," Policy Studies Journal (Special Issue, 1980); Donald S. Van Meter and Carl E. Von Horn, "The Policy Implementation Process: A Conceptual Framework," Administration and Society, 4 (February, 1975).

19. Erwin Hargrove et al., Regulations and Schools: The Implementation of Equal Education for Handicapped Children (Nashville, Tenn.: Vanderbuilt University, Institute for Policy Studies, 1981); Richard Weatherley, Reforming Special Education: Policy Implementation From State Level to Street Level (Cambridge, Mass.: MIT Press, 1979); Richard Weatherley and Michael Lipsky, "Street-Level Bureaucrats and Institutional Innovation: Implementing Special Education Reform," Harvard Educational Review, 47 (May, 1977).

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21. David Kirp et al., "Legal Mandates and Organizational Change," in Nicholas Hobbs, ed., Issues in the Classification of Children, Vol. III (San Francisco: Jossey-Bass, 1975).

22. "Progress Toward a Free Appropriate Public Education." A Report to Congress on the Implementation of Public Law 94-142: The Education for All Handicapped Children Act (Washington, D.C.: Office of Education, U.S. Department of Health, Education and Welfare, 1979), pp. 87-91.

23. See, note 4.

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28. Ibid.

29. Jane Stern, private interview, February 4, 1982.

30. These included classes for the neurologically impaired and emotionally handicapped, pre-placement classes, readiness classes, and centers for the multiply handicapped.

31. Carol Ziegler, private interview, April 29, 1981.

32. Reid v. Board of Education, 433 F. 2d 238 (E.D. N.Y. 1971).

33. Reid v. Board of Education, 453 F. 2d 238 (2d Cir. 1971).

34. For a detailed analysis of the issues of New York State law governing the rights of the handicapped, see Barbara Gott, "Educating New York's Handicapped Children," *Albany Law Review*, 43 (Fall, 1978).

35. *In the Matter of Riley Reid*, 13 Ed. Dept. Rep. 117 (1973).

36. "Legal Issues in the Classification of Handicapped Children in New York City," *op. cit.*, p. 32.

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38. *In the Matter of Kelly*, 15 Ed. Dept. Rep. 427 (1976).

39. *In the Matter of Michael A.*, Ed. Dept. Rep. Decision No. 9282 (1976).

40. *In the Matter of Reid*, Ed. Dept. Rep. 127 (1977).

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46. *Ibid.*, p. 157.

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53. United States District Court, Eastern District 79C 270, *Memorandum and Order*, May 16, 1979.

54. *Dyrcia S. v. Ambach*, 79 C 2562 (E.D. N.Y. 1979).

55. *Lora v. Board of Education*, 456 F. Supp. 1211 (E.D. N.Y. 1979).

56. Carol Ziegler, private interview, April 29, 1981.

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59. *Lora v. Board of Education*, Docket No. 79-752, 1980.

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65. Letter of James G. Greilsheimar to Marvin Frankel, Regarding *Jose P. v. Ambach*, November 30, 1979.

66. Amelia Ashe, Memorandum to Members of the Board of Education and Frank J. Macchiarola, Regarding *Jose P. v. Ambach*, December 12, 1979.

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70. *New York Times,* January 25, 1980. See also, Edward I. Koch, "The Mandate Millstone," *Public Interest*, 61 (Fall, 1980).

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83. Testimony by New York City Council President Carol Bellamy, before the Comptroller's Hearings on Special Education, Board of Estimate Hearing Room, City Hall, September 4, 1980.

84. Statement by Albert Shanker, President, United Federation of Teachers, Local 2, AFT, AFL-CIO, before a Special Hearing of the Comptroller of the City of New York on Special Education, September 5, 1980.

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109. Ibid.

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113. These included 2661 for evaluation, 3491 for self-contained placements, 2162 for resource room placements, 4728 for related services, 303 for placements in day or non-residential public schools. Jose P. v. Ambach, 79 C 270 (EHN), Special Master's Report, No. 8.

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115. Alan Gartner, Memorandum to Superintendents of Community School Districts, Regarding the Harrison House RFP, November 18, 1981.

116. Alan Gartner, private interview, January 21, 1982.

117. Alan Gartner, Memorandum to Richard Halverson, December 9, 1981.

118. Ibid.

119. Jose P. v. Ambach, 79 C 270 (EHN), Special Master's Report, No. 9, December 21, 1981.

120. Newsday, January 7, 1982.

121. "Report on Growth in the Division of Special Education: 1978-1981," Division of Special Education, New York City Public Schools, November, 1981.

122. Ibid.

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124. New York Post, January 22, 1982.

CHAPTER FIVE

DESEGREGATION IN QUEENS

Most historians would trace the turning point of the civil rights movement to the momentous Brown decision of 1954, when the Supreme Court ruled that "separate but equal" educational facilities are in violation of the fourteenth amendment to the Constitution.[1] Based upon expert testimony by social scientists such as Kenneth Clark, the Warren Court declared that the separation of the races was psychologically damaging to black children who were denied access to certain public schools. In 1955, the Court in Brown II put teeth into its original decision when it ordered the Board of Education of Topeka, Kansas to desegregate its educational facilities with "all deliberate speed."[2] Thus was established a standard of implementation which would set the stage for more than two decades of legal and political debate in both the South and the North concerning the controversial issue of school desegregation.

This chapter concerns an attempt by the central school Administration in New York to implement a federal desegregation order in Rosedale, Queens against the will of the local community school board. As such, it symbolizes the kind of conflict which continues to surround the subject of school desegregation. Moreover, from a local perspective, it is indicative of the level of resistance which a locally elected community school board can mobilize against the Chancellor, even in the face of a legal mandate imposed by the federal government. This chapter is similar to those which precede it in the sense that it again portrays a situation where the central school Administration is subject to conflicting cross pressures by outside institutions or groups. However, this case study goes beyond the common theme of the previous pages in that it deals with a situation involving multiple jurisdictions - that is, an area of policy in which several levels or institutions of government have authority to exercise discretion. The phenomenon of multiple jurisdictions is made highly apparent in this case by the kinds of political strategies exercised by each of the major actors, here the Chancellor and the local school board. Political scientists would call this strategy widening the scope of conflict.[3] It means that when a given participant in a political conflict does not derive satisfaction from one decision arena, it takes the conflict to another arena where a more sympathetic hearing is expected. A strategy of this sort is particularly relevant in a controversy over desegregation, where the legal mandate and the guidelines for its implementation are not as clear as the original Brown decisions would have led one to believe.

The Brown decisions were followed by a decade of intense litigation at the district court level, whereby the lower federal judiciary attempted to define just what was meant by the Supreme Court's long-standing order. Was the Court merely outlawing de jure segregation, which was the result of purposeful state and local policy, or was it also prohibiting de facto segregation, which was not intentional. Were local school districts merely required to desegregate separate educational facilities, or were they also expected to develop far-reaching plans for integration and racial mixing.[4] These debates notwithstanding, by 1964, only two percent of all black children in the deep South were attending desegregated schools.[5] It was in that decennial year that Congress, under the prodding of President Lyndon Johnson, entered the picture and passed Title VI of the Civil Rights Act. This act prohibited discrimination on the basis of race or national origin in any state or local program receiving federal financial assistance. While the provisions of Title VI were not limited to education, its enactment led to the creation of the Office for Civil Rights within the Department of Health, Education and Welfare, which was authorized to initiate proceedings to cut off federal funds in cases where discrimination was found to exist. The potential impact of these legislative and executive actions became particularly significant over the next year with the passage of the Elementary and Secondary Education Act, the largest infusion of federal education dollars in American history.

It was not until 1968 that the Supreme Court began to hand down a series of decisions designed to further define its expectations with regard to school desegregation. In Green v. School Board of Kent County,[6] the Court struck down a "freedom of choice" plan in rural Virginia which did not actually result in the desegregation of the races. While it did not declare freedom of choice plans unconstitutional per se, it pronounced suspect any scheme that did not achieve the goal of desegregation in situations where there was a prior history of intentional segregation. A year later in Alexander v. Holmes County,[7] the Court took the "all deliberate speed" formula to a more rigorous standard, declaring the obligation of "every school district" to "terminate dual school systems at once," and to operate "now and hereafter unitary schools." It defined a unitary school system as one in which "no person is to be effectively excluded from any school because of race or color."

The inauguration of Richard Nixon in 1969 was representative of a rising tide of conservatism throughout the nation, and this changing mood would be felt on the Supreme Court with the appointment of Chief Justice

Warren Burger. The dissention and violence that accompanied desegregation efforts in the South had already given birth to a deep skepticism regarding the merits of forced racial mixing and its practical progeny, court-ordered busing. This experience also served to erode a broad political base that once could be enlisted for liberal causes on behalf of human rights. In 1971, the Burger Court handed down its first major decision concerning desegregation. In Swann v. Charlotte-Mechlenberg,[8] the Court reaffirmed that school districts must take positive steps in order to undo the effects of past discrimination, and it recognized busing as an acceptable means towards that end. However, reflecting an emerging conservatism within its ranks, the Court also found that one-race schools are not absolutely forbidden, but left the burden of proof regarding intent with the plaintiff. Writing the majority opinion, Chief Justice Burger also went to great lengths in order to define a limit on the permissible scope of busing. He declared,

> An objection to the transportation of students may have validity when the time and distance of travel is so great as to either risk the health of children or significantly impinge on the educational process.[9]

By imposing such limits, the Court was in effect prescribing a standard of judicial intervention which, in broad terms, required that the remedy imposed by judicial action must fit the violation at hand. In concluding his opinion, the Chief Justice also voiced strong approval for the use of freedom of choice plans and the gerrymandering of school district lines as appropriate remedies for desegregation. The emerging philosophy of the Burger Court was very much in accord with the political climate of the times. In 1972, Congress passed the Emergency School Aid

Act which provided funds to assist school districts in the process of desegregation. The provisions of the act, however, were quite restrictive with regard to how federal funds might be used. These monies would be made available to provide incentives for voluntary desegregation in the form of magnet schools, after-school programs, and educational enrichment programs, but could not be applied to support busing. The Equal Educational Opportunities Act, passed two years later, would also contain a limitation on busing.

In 1974, the Court became involved in its first major desegregation case in the North. In Keyes v. School District No. 1 [10] in Denver, Colorado, the Court entertained a presumption that if a plaintiff could prove segregation caused by "intentional state action" in a "meaningful portion" of a district, such proof raised the inference of intentional segregation in the entire school district. Here again, the Court, in an opinion written by Justice Brennan, distinguished between de jure and de facto segregation, but under the conditions described, placed the burden of carrying forward evidence upon the district defendant.

That same year, the Court in Milliken v. Bradley [11] overturned a metropolitan desegregation plan in Detroit that involved a neighboring suburban district. In this case, the district judge had ruled that segregation in Detroit was not a local de facto situation, but rather the result of state and local de jure policies that resulted in the concentration of blacks in the inner cities and whites in the suburbs. Arguing that a Detroit-only plan would be inadequate, the judge then ordered a metropolitan remedy. The plan was upheld by the federal Court of Appeals. However, the Supreme Court ruled that it would not order an interdistrict remedy unless plaintiffs could prove intentional discrimination on the part of the suburban districts involved.

In 1977, the Supreme Court in Milliken II[12] sustained orders by the lower courts in Detroit that state resources be made available for the in-service training of teachers and for compensatory programs in reading and mathematics. This decision was indicative of a new emphasis on quality education that was emerging, as opposed to the more traditional remedy of racial mixing. That same year, Congress passed the Eagleton-Biden amendment as a rider to an appropriation bill which held that the Department of Health, Education and Welfare could not order busing as a means to achieve compliance with Title VI of the Civil Rights Act. This bill still allows the Department of Justice and private plaintiffs to sue for busing remedies. However, since its passage, the Senate has voted twice to enact laws that would strip the federal courts of the power to order busing, and both the House and Senate have voted on separate occasions for laws that would prohibit the Justice Department from pursuing court cases that could lead to busing. Moreover, under the Reagan Administration, the Justice Department itself has assumed a nonaggressive posture on the issue of school desegregation, thus leaving a major part of the responsibility for litigation with private plaintiffs.

Notwithstanding attempts by the Court to add some reason and order to the resolution of school segregation, the experience with desegregation throughout the nation has been mixed and uneven. Ironically, some of the most vehement opposition to desegregation and forced busing has occurred in the North. One of the early cases of such violent reaction occurred in Pontiac, Michigan in 1971. Perhaps the most publicized episode in racial upheaval occurred in Boston in 1974, when Judge Garrity's order to desegregate South Boston High School brought the school system to a virtual standstill.[13] Other major cities where busing plans have been problematic in terms of racial mixing include San Francisco, Cleveland, and Houston. However, there are also those places such as St. Louis, Tampa, and Columbus, where busing efforts have proceeded relatively smoothly. Metropolitan plans are in operation in Louisville and Wilmington (Del.). In Indianapolis, more than five thousand inner-city children are bused daily to school districts in neighboring suburbs. Mandatory court-ordered plans remain in place in Austin, Seattle, Dayton, and Pittsburgh, among other places. However, with the Justice Department now taking a more moderate stance with regard to desegregation, many cities are being allowed to move away from forced racial mixing, and instead are adopting more voluntary strategies. Chicago, Buffalo, and Dallas are particular cases in point. In Los Angeles, voters have passed a popular referendum which would terminate a state policy of utilizing busing to eliminate de facto segregation. That proposition has been upheld by the Supreme Court, since the program in question went beyond the federal requirements for mandatory desegregation. The fact is that despite occasional examples to the contrary, busing or forced racial mixing are still unpopular phenomena, and policy makers at all levels of government are becoming more willing to respond to that sentiment in order to accommodate the demands of their constituents.

The fundamental question still remains. What is to be done in situations where minority children are denied equal access to educational facilities because of their race? Surely, such a practice cannot be tolerated within the bounds of morality and the law. But some would argue that the remedy has become more troublesome than the problem. Is the cost of social equality ever too exacting in a free society? What has been the outcome of desegregation in the United States? What have been the unanticipated consequences? Have we succeeded in racial mixing at the school level? After more than a quarter century of history with desegregation in the United States, we would hope to have learned something. Certainly there were instructional and affective objectives behind the arguments proposed to the Court by social scientists such as Kenneth Clark. Have desegregation efforts helped to overcome the psychological damage caused by racial isolation? Do black children learn more in an integrated setting? What has been the impact of desegregation on white children? Have liberal social planners placed an unfair burden on children to compensate for the inadequacies of adults?

According to the Coleman Report published in 1966, most children in the United States were still attending segregated schools a decade after the Brown decisions.[14] The report did show, however, that in cases where it did occur, mixing poor minority children with children from middle class backgrounds had a positive impact on the achievement scores of the poorer children. In 1973, Coleman published another major study concerning trends in school segregation between 1968 and 1973.[15] It showed that school desegregation was a significant cause of declining white enrollments in public schools, thus giving birth to the well-known white flight thesis. Coleman's second study drew strong criticism from other social scientists in terms of both its methodology and conclusions.[16] However, within a short period of time, some of these same critics would uncover their own research findings that were in basic accord with the claims of Coleman.

For example, in separate studies, Farley and Rossell agree that white flight does occur as a result of desegregation when certain conditions are in existence:

- When a substantial proportion (perhaps 25% or 30%) of the school population is black or minority;

- In central-city districts surrounded by accessible and predominantly white suburbs, and

- When there is a significant shift in the racial balance of schools, and primarily white reassignment is involved in the shift.

Farley and Rossell also have found that white flight is most pronounced during the first year of implementation, except when a plan is implemented in several phases. Rossell adds that white flight occurs especially when student assignments are mandatory, and when white students are assigned to minority schools. Her research also suggests that voluntary plans are not so likely to result in white flight. In an attempt to further explain the reasons behind white flight, the research of David Armour proposes that whites are motivated by a commitment to the neighborhood school concept, and the belief that neither blacks nor whites benefit from desegregation.[18] Armour concurs with Farley and Rossell on the point that white flight is strongest during the first year of implementation, but his longitudinal data also shows white losses continuing over a period of four to five years.

Notwithstanding the existence of white flight, the fact remains that many schools have been desegregated. And the outcomes in those instances have been most interesting and moderately encouraging, if not conclusive. McConahay has found that although students in desegregated schools have not reached the point where race is an insignificant variable in associational or friendship patterns, race is not as powerful a factor as gender.[19] He also observes that interracial friendships are being formed at an increasing rate, which could not happen in segregated schools. Edgar Epps has conducted a comprehensive analysis of the research literature concerning the psychological impact of desegregation on black children. [20] The data he uncovered revealed mixed patterns. In some cases, black children have exhibited a higher self-concept in desegregated schools, in others, they show more positive results in segregated settings. However, there is one point that seems to come through in this literature quite clearly. It shows that what goes on in the classroom between teacher and student is a more critical factor in terms of personality development than either segregation or desegregation. This latter conclusion is in agreement with the research of Felice and Richardson, which shows that desegregation will produce positive benefits in terms of individual development when the teachers where minority students have been bused are positive and supportive. [21] These findings are also consistent with the research data on effective schools.

In her analysis of sixty-four studies on the relationship between desegregation and pupil achievement, Nancy St. John has found that there is no strong evidence that desegregation will close the white-black achievement gap. [22] However, she modifies this conclusion by noting that desegregation has rarely lowered and sometimes raised the achievement scores of black children. In a more extensive review of a similar body of research literature, Weinberg provides us with a more encouraging assessment of the cognitive effects of desegregation. He writes, "Overall, desegregation does indeed have a positive effect on minority achievement levels." [23] In another comprehensive review, Crain and Mahard have attempted to identify those conditions under which desegregation is most successful in improving minority achievement.[24] The results of their work seem to focus on the variables of effective schooling that have been uncovered in other areas of instructional research previously discussed. These include high expectations, appropriately trained staff, adequate facilities, and more effective teaching. Crain and Mahard's findings are also consistent with the conclusions of Coleman, which suggest that mixing with middle-class students who are college-bound has a positive impact on poorer minority children. It is worthy to note, however, that there is an implication in both works which suggests that mixing by social class is a more significant variable in terms of achievement than racial mixing.

To date, the most comprehensive assessment of desegregation in the United States is a seven-year project initiated under the auspices of the Office for Civil Rights and the National Institute of Education. Its scope includes an analysis of approximately twelve hundred previous studies, ten court cases, and desegregation activities in seventeen cities. The project team, headed by Willis Hawley, is composed of seventeen scholars from ten universities, several of whom have been mentioned in the foregoing paragraphs. The results of the team's work have been disseminated in a variety of forums since 1978. In a recent attempt to bring together some of the major conclusions of the group's research, Willis Hawley has presented a rather favorable portrait of the experience with desegregation.[25] He tells us that between 1968 and 1976, segregation has declined by fifty percent. While recognizing the causal relationship between forced busing and white flight, Hawley interestingly notes that parents of children who are involuntarily bused consistently exhibit more positive attitudes towards desegregation than parents of children who are not.

In terms of academic achievement, Hawley cites the following general findings of his study group:

- White students rarely experience declines in performance.
- Minorities more often benefit academically than they experience negative effects.
- The earlier minority children experience desegregation, the more likely it will have positive results.
- The more carefully a school district prepares for desegregation, the more likely it will have a positive impact on student achievement.

In terms of self-esteem and racial identity, Hawley presents the following conclusions:

- Desegregation causes an increase in short-term anxiety and self-doubt among minority children, but this reaction usually disappears over time.
- The key determinant of how desegregation will effect self-esteem is teacher behavior.
- Rigid tracking and highly competitive environments are detrimental to the self-image of low achievers.
- The racial identity of neither blacks nor whites is damaged by desegregation, although blacks may become more race-conscious.

If one is to accept the evidence produced by Hawley and his colleagues, then it must be believed that desegregation has been a relatively successful attempt at social intervention. As the work of this group has proceeded to its more advanced stages, it has given less attention to debating the merits of desegregation, now assumed to be satisfactory, and has devoted more energy to defining those strategies for making it most effective. [26] One cannot help but draw an analogy here with the research on effective schools. That literature reached a turning point when debates focusing on the efficacy of school organizations gave way to inquiries concerning the characteristics of effective schools. Perhaps we are about to turn a similar corner with regard to the scholarship on desegregation. Assembling the major features of the work product generated by his own study group, Hawley provides us with the following strategic guidelines for effective school desegregation:[27]

- Desegregate students as early as possible.
- Encourage racial interaction in both academic and extracurricular settings.
- Avoid forms of tracking and ability grouping that highlight individual and group achievement differences.
- Organize schools and classrooms so that each has a "critical mass" of each racial group served.
- Minimize scale so as to decrease the number of students with whom a teacher must work.
- Develop rules of school governance that are fair, consistent, and equitable.
- Maintain a relatively stable student body.
- Recruit a racially diverse staff that is unprejudiced, supportive, and insistent on high standards.
- Maintain ongoing staff development efforts.
- Involve parents in instructional activities.
- Provide incentives for voluntary segregation as a supplement to mandatory approaches in districts with high proportions of minority students.
- Involve the community, particularly parents, in the desegregation process.

DESEGREGATION IN NEW YORK

A report released by the United States Commission on Civil Rights in early 1979 has noted that between 1954 and 1968, "only limited desegregation" occurred in New York City.[28] By 1978, less than thirty percent of the student population in the public school system was white. However, the report indicated that white students make up between fifty and eighty percent of the student population in about 150 of the city's more than 900 schools. The history of desegregation in New York has been conspicuously uneventful. There has been little turmoil, meager effort, and only occasional litigation. There is some logic to this history. Clearly, the lack of much turmoil is a direct result of the fact that there has not been much effort. But this does not explain the low incidence of court action.

Race has been an important ingredient of school politics in New York. But the battleground upon which racial politics has been fought concerned decentralization, not desegregation. This history was the product of a rising racial consciousness on the part of blacks, their dissatisfaction with white school administrators, and their demand for community control. To put it plainly, neighborhood government was a concept more relevant to the fight for equal rights in New York, and its corollary, the neighborhood school, was considered anathema to the goals of desegregation.

Another reason behind the near absence of desegregation litigation in New York is more legal in nature. It has to do with the fact that New York does not have a well-documented history of intentional racial segregation in its schools. This is not to say it never existed. But given the record, intentional discrimination is difficult to prove. Therefore, legally, racial isolation in the City schools is, for the more part, "de facto," and not susceptible to judicial remedy. Of course, there have been exceptions.

In 1974, a federal court judge found intentional racial segregation to exist at predominantly black Mark Twain Junior High School in Community School District 21 in Brooklyn.[29] He ordered the Community School Board to take action that would desegregate the school according to the standards established by the Supreme Court. Soon thereafter, the school board submitted to the court a plan that would convert Mark Twain Junior High School into a magnet school for gifted and talented children. After the court approved the plan, the district applied for and received $1.5 million in federal ESAA funds to help implement its new program. The federal money was used for hiring human relations coordinators, guidance counselors, and family assistants to provide multicultural educational activities. The resolution of the Mark Twain issue was representative of the moderate approach to desegregation that was typical in New York.

In 1975, a more heated debate over desegregation began to stir in Queens concerning Andrew Jackson High School. Jackson High School is located in the predominantly black neighborhood of Cambria Heights, approximately one mile from the Nassau County border. When the school opened in 1937, the student population in Queens was virtually all white, as was that of Jackson. By 1975, the school population in Queens was 55.4% white, but Jackson was nearly an all black school. That year, the parents association from the high school petitioned the State Commissioner of Education to take action that would prevent Jackson from becoming a racially segregated school. Commissioner Ewald Nyquist responded by ordering that Jackson be integrated to reflect the racial composition of the entire student population of Queens.[30] Six months later, the Board of Education petitioned the Commissioner for a new hearing. It argued that compliance with the order would upset the racial balance within the remainder of Queens, and further accelerate white flight. In 1976, Nyquist rescinded his order. He ruled that the compulsory assignment of whites to Jackson would "impair...racial integration of the high schools of the borough as a whole."[31] In place of his orignial order, the Commissioner approved a voluntary plan which would avail Jackson students of an opportunity to choose an integrated school elsewhere. However, no white students were mandatorily assigned to Jackson. At that point, the parents association of Jackson, with the help of the NAACP, took the case into federal court.

The parent plaintiffs presented their case against the State Commissioner and the City Board of Education before federal district court Judge John F. Dooling Jr. They argued that the actions and inactions of the defendants represented a case of de jure segregation. They sought to enjoin the defendants from "continuing to maintain and perpetuate Andrew Jackson High School as a racially segregated facility." In the summer of 1977, after the original trial, the NAACP proposed to add nine Nassau County defendants to the case in order to press for a cross-county integration remedy.

Judge Dooling did not hand down his decision until May of 1978. He then found that de jure segregation had not in fact existed because there was "no evidence that the Board has sought to segregate minorities."[32] However, he ruled that the voluntary plan approved by the Commissioner in 1976 was an unconstitutional denial of equal protection because it limited the admission choices of minority students. While he denied the plaintiffs' request for a cross-county remedy, he ordered the Board of Education to present a plan to the Commissioner that was in accord with Nyquist's original 1975 order. The plan was due for submission on the first of July, the same day that the new school Administration would take office.

Judge Dooling's ruling received considerable attention in the local media, and it was highly unpopular. A public opinion poll taken by the Daily News in early June showed that 54% of the respondents in New York City and its four neighboring suburban counties (Nassau, Suffolk, Westchester, Rockland) disapproved of the decision. Only 29% voiced approval, and another 17% responded "don't know." At about the same time, the Board of Education decided to appeal the case. Several other parties filed amicus briefs to the court. The Queens County Democratic coalition submitted papers arguing for a reconsideration of whether Nassau County should be included in the integration plan. Two Nassau County legislators filed opposing briefs.

When the new Chancellor was sworn in on the first of July, only one of the 2500 students registered at Andrew Jackson High School was white. On June 15th, Judge Dooling had extended the due date for an integration plan until July 10th. In the meantime, the appeal was still pending. These were all Macchiarola's problems now. But so far as desegregation was concerned, they would turn out to be the least of his worries. Another battle had been quietly brewing in Rosedale Queens that would develop into the most volatile public controversy ever to be faced by the new Chancellor.

ROSEDALE: A STUDY IN IRONY

In most metropolitan centers, "white flight" refers to a post-1950 phenomenon in which the white middle class has fled the inner city in order to take up residence in the outlying suburbs. In New York's demographic history, there has been an intermediate step in that usual pattern. The first wave of out-migration from the inner city in New York was deposited in its own outer boroughs. Foremost among these is the borough of Queens which, in terms of housing stock, population density, and ethnicity, bears a closer resemblance to suburban Nassau County than it does to Manhattan or central Brooklyn. The further east one goes in Queens, the stronger that resemblance becomes. Community School District 29 is located on the eastern border of Queens, adjacent to Nassau, not far from Andrew Jackson High School. It is primarily composed of two middle-class communities, Rosedale, which is predominantly white, and Laurelton, which is predominantly black. Along the western border of the district is the community of Springfield Gardens, which is primarily black. Located in Springfield Gardens is Intermediate School

231, the original site of a major conflict regarding desegregation.

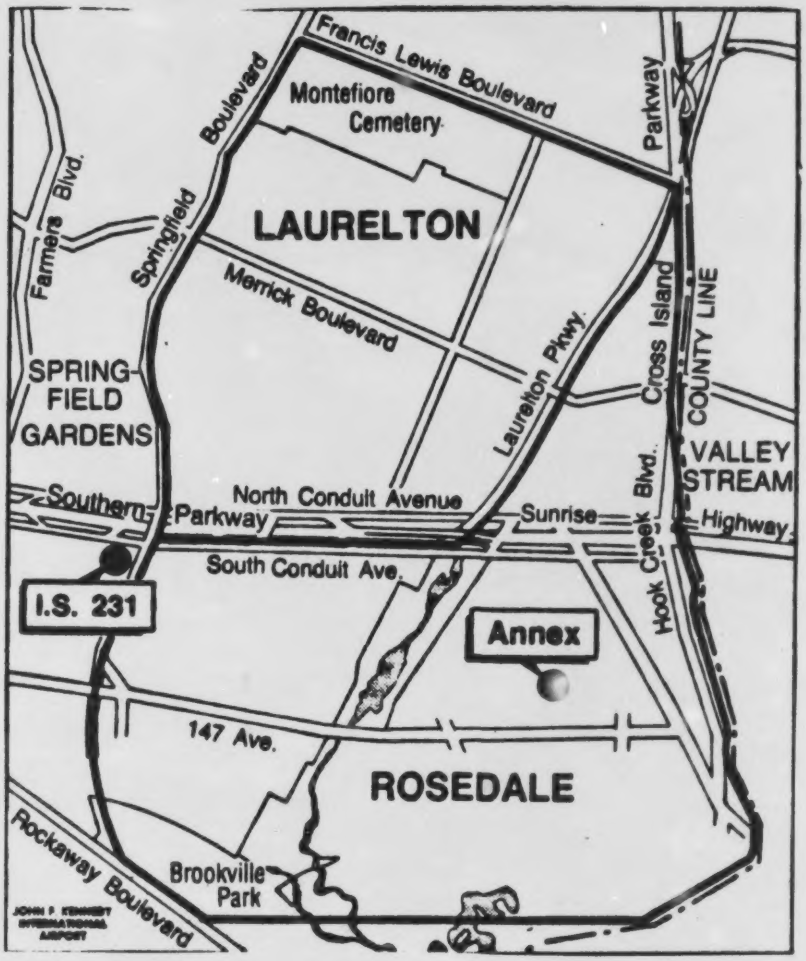
The Rosedale community is more than three hundred years old. Its major population growth took place as part of a post-World War II building boom when its population grew to the approximately 22,000 residents that it boasts today. Many of Rosedale's postwar settlers were city policemen, firemen, and other municipal workers, attracted to the community by the suburban-style living and the moderately priced housing. About seventy-five percent of the families are white, strongly represented by Jewish, Irish, and Italian homeowners. Many of the people who live in Rosedale today are there to escape the problems of the inner city, their flight propelled by the in-migration of blacks whom they associate with crime, poverty, and dilapidated living conditions. Despite these fears, many community leaders have attempted to maintain the stability of the neighborhood and stem the next stage of flight to the suburbs that usually occurs when black migration starts to push towards the outskirts of the city. Joseph Albergo, president of Community School Board 29, who has lived in Rosedale more than twenty years and owns an automobile repair shop in neighboring Valley Stream, tells us the following about his neighbors,

> These are people who have moved three or four times already; who feel that when blacks move into the neighborhood, crime follows. I have to make them understand that when this black guy moves in, he's as happy to live here as the next guy, and he's not looking to create any problems. I tell them that these are people trying to make it the same way we are trying to make it. 34

Laurelton is a much newer community than Rosedale. Twenty years ago, it was predominantly Jewish. Today, its population of 24,000 is eighty-five percent black. In 1963, a biracial group of residents in the community

ILLUSTRATION V-1

COMMUNITY SCHOOL DISTRICT 29


Francis Lewis Boulevard
Montefiore Cemetery
Springfield Boulevard
Farmers Blvd.
LAURELTON
Merrick Boulevard
Laurelton Pkwy.
Cross Island Parkway
COUNTY LINE
SPRING-FIELD GARDENS
VALLEY STREAM
Southern Parkway
North Conduit Avenue
Sunrise Highway
Hook Creek Blvd.
South Conduit Ave.
I.S. 231
Annex
147 Ave.
ROSEDALE
Rockaway Boulevard
Brookville Park
JOHN F. KENNEDY INTERNATIONAL AIRPORT

Source: Newsday, September 30, 1978

organized to form the Laurelton Block Associations. It was the first group of its kind in New York to work with state authorities in order to curb the block busting and panic selling that usually accompany demographic changes. Many of the blacks who have moved to Laurelton from the inner city were driven there by similar motivations as those of the whites. Charlotte Webb, a black member of the Community School Board, explains:

> My husband is a fireman. We moved out of Brooklyn because the neighborhood was changing. We wanted a neighborhood where everyone was working. We wanted a good school for our children. [35]

For many years, the neighborhoods that make up Community School District 29 have been praised as a model of successful integration. A local newspaper once described the community as "a racial mosaic." [36] Blacks and whites had lived together side by side in peaceful harmony and had sat together on the same community councils and school board. However, that history has not been untarnished. In 1973, an anti-integrationist group called Rights Of All Rosedale (ROAR) was formed. On New Year's Eve in 1974, the home of Gloria and Ornestan Spencer, a black couple, was firebombed. Six months later, a vacant house about to be occupied by another black family was set afire. These incidents brought Rosedale considerable negative attention, including a nationally televised show by Bill Moyers. Residents of Rosedale resent the negative publicity received by the ugly incidents. They feel that it has painted an unfair picture of the community. They claim that the leaders of ROAR have moved out. But the scars remain.

I.S. 231 was opened in Springfield Gardens in 1965 for students in grades six through eight. It was created to serve the students from five elementary "feeder" schools. These include P.S. 138 and P.S. 195, which today are predominantly white, P.S. 156 and P.S. 181 which are predominantly black, and P.S. 38, which has a white/black ratio of 60/40. By 1970, I.S. 231 was overcrowded, due in large part to the unexpected and large population growth in southeastern Queens during the first five years of the school's existence. In 1973, the Board of Education added a new wing to the school which was to provide space for 500 additional students in the 1100 capacity facility. However, no funding was made available to provide companion additions to the lunchroom, gym, or auditorium. Therefore, the school board chose to use the new wing as an early childhood center, leaving the school overcrowded, and then requested that another intermediate school be built within the district. In 1975, the Board of Education began construction on I.S. 240. According to the zoning plan developed by the school board, the feeder pattern of the new intermediate school was to be primarily white, serving P.S. 38, P.S. 138, P.S. 195, and P.S. 196. After one year, construction was halted because of the city fiscal crisis.

In addition to its overcrowding, I.S. 231 was also known to have some discipline problems. Whether these difficulties were any more severe than is usually the case of an inner-city middle school is debatable. However, the Springfield Gardens school did go through six principals in a period of thirteen years. When it was discovered that construction would end on I.S. 240, the school board of District 29 developed a plan to create an annex for I.S. 231. The annex was to open in February of 1977. It was to be housed on the top floor of P.S. 138, which is located in Rosedale, two miles from the main school facility in Springfield Gardens. The annex would draw its students from primarily white feeder schools. The latter proposal caused dissention among the black members of the school board and community leaders from Laurelton.

On January 24th, 1977, Chancellor Irving Anker advised the Community School Board of District 29 that it would not be timely to open a new annex in the middle of the school year. Contrary to that advice, the school board went ahead with its plans to implement its proposal. On January 31st, the local school board received instructions from Livingston Street that no plans should proceed without prior approval from the central Board of Education. On February 4th, a handbill was distributed to parents by the local school board announcing that it voted to establish an annex for I.S. 231 at P.S. 138. Children from P.S. 38, P.S. 138, and P.S. 195, all of which were predominantly white, would be given the first choice to attend. On the same day that the handbill was distributed, Superintendent Anker superceded the local school board, and the plan for the annex was dropped.

In the spring of 1977, the Chancellor's Office and the Community School Board worked together to develop a plan for opening the annex. The central school administration was interested in designing an arrangement which would allow the annex to be open to all the I.S. 231 feeder schools. In a meeting that May, it was agreed that the enrollment of students at the annex would be essentially by random choice, but that student assignments would be made, if necessary, in order to keep minority representation in the annex to a minimum of 30%. The annex was then opened in September of 1977. In February of 1978, the local school board advised the Chancellor that it intended to zone the annex so that it would primarily serve the predominantly white feeder schools from the district. This was contrary to the agreement that had been made, but throughout April and May, local board members insisted that they would proceed with their new plan for September. In the meantime, they did not respond to requests by the Chancellor for data on the racial composition of the school district.

There were many issues tied into the annex debate. In addition to complaints about overcrowding and safety in the main school, Rosedale residents were claiming that the annex provided their children with a neighborhood school within walking distance from their homes. Yet, underlying all discussion about the annex was the more significant issue of race. Charlotte Webb, a black member of the local school board, alludes to the influence of the "tipping factor" - the point at which minority children become the numerical majority in a school. She asserts:

> The whites wanted out of 231 because it tipped. Integration was fine until the balance changed to 60-40 for blacks. People did not complain about overcrowding until it tipped. [37]

Linda Ovadias, a white parent leader and supporter of the annex, claims,

> A large part of the issue had to do with safety. Girls were molested. Boys were beat up. So white children were moved out. When blacks are in the majority, the whites won't survive. [38]

Rosedale fits very well into the general historical pattern of the country. As the research literature on the subject shows, whites become less tolerant of an integrated situation when they are in the minority. They are less adaptable to such circumstances than are blacks. When a school tips out of their favor, whites tend to flee. Thus, the annex in Rosedale soon became linked to the question of neighborhood stability. As Linda Ovadias explains:

> The annex was formed because of overcrowding. But there was also the problem of white flight. The annex stabilized the neighborhood. [39]

The enrollment data of the I.S. 231 annex were revealing. Prior to its opening, the racial composition of the main school building in Springfield Gardens was 77% minority and 23% white. When the annex went into operation, the register at the Rosedale facility was 73% white and 27% minority. This left the composition of the main school building at approximately 98% minority. When the annex opened its doors in September of 1977, the Federation of Laurelton Block Associations filed a complaint with the Office for Civil Rights (OCR). The group claimed that the white majority of the nine-person community school board had intentionally created a racially segregated facility in Rosedale. The federal government initiated an investigation. This began a long episode that was characterized by litigation, political maneuvering, and the constant exchange of racial epithets.

There is a real irony about Rosedale. Many of those who became embroiled in the controversy were among the original group who had labored to make integration work in their community. They hung on while others fled to suburbia. Now they were on the other side of the table. As school board president Joseph Albergo exclaimed, "The white people who stayed and tried to integrate are the ones who are called bigots." [40]

Consider the position of those black parents in the community. They had moved to Queens to seek a better way of life, to take their children out of the troubled neighborhoods of the inner city. Now they were the ones being avoided. The whole situation was both confusing and demoralizing. Charlotte Webb, a black parent, explains,

> I don't know what the whites are afraid of. The stories of violence are so exaggerated. What do they think we are going to do to them? How do you think it makes one feel to know that her children are unwanted? [41]

When the new Chancellor took office in 1978, the annex was still open, in violation of the agreement that had been made with Irving Anker. The OCR investigation was still pending. On the first day of school that September, a group of parents, mostly black, held a sit-in at the principal's office in I.S. 231. They were demanding that the annex be closed. Two days later, Chancellor Macchiarola and the members of Community School Board 29 received a ten-page letter from the Office for Civil Rights. In it were the findings of the investigation regarding I.S. 231. It stated as follows:

> The City of New York is engaged in discriminatory conduct in violation of Title VI of the Civil Rights Act of 1964...The violation involves the location of a school annex which resulted in a racially identifiable school. 42

The OCR report gave rise to much speculation. Just how would the new Chancellor react? Would he begin his tenure by taking on a popularly elected community board? That could be catastrophic in terms of his developing an important relationship with thirty-one other school boards and their superintendents. Could he ignore the complaints of those black parents whose children were found to be the objects of illegal discrimination? Such action would send out a souring message to the minority community of the city, which makes up 70% of the school population. As the events slowly unfolded concerning I.S. 231, it became apparent that some time would pass before the Chancellor became a major actor in the controversy. Other matters would steal his attention, other debates over the difficult issue of desegregation. By the time the Chancellor became immersed in Community School District 29, he would already have a record on the issue, which, under normal circumstances, would have made his behavior predictable.

THE CHANCELLOR'S RECORD: MODERATION UNDER LAW

Desegregation had never been at the center of educational politics in New York. But it would arise early as an issue to be dealt with by the new Administration. That was not by choice. Macchiarola's team had made it clear from the outset that desegregation would not be a significant part of its policy agenda. So long as it was not the result of intentional and illegal segregation, racial isolation was viewed as an acceptable fact of inner-city life. This Administration would focus its energies on effective instruction, and racial mixing was not considered a prerequisite to that goal. Indeed, the basic premise underlying the philosophy "All Children Can Learn" was the proposition that poor and minority schools could be made to work. Desegregation, under most circumstances, was tangential to these established priorities. As Ron Edmonds, the highest-ranking black member of the Administration, explained:

> The New York City schools are predominantly minority - we accept that. That means that it is not our intention to do anything (beyond what is already being done) to alter the racial composition of buildings or boroughs. Our energies are fixed on raising achievement. 43

That was the plan. However, it would not quite turn out that way. As the events recounted in the previous chapters have shown, policy agenda are a function of both inheritance and design. Desegregation would become relevant.

First, there was the Jackson case. The appeal of Judge Dooling's decision was still before the court. It had to be pursued. According to public opinion polls, the ruling itself had proved to be unpopular. More importantly, there was a significant flaw in the legal reasoning. Judge Dooling had found that racial isolation in the Cambria Heights high school was not the result of intentional public policy. At the same time, he ruled that the constitutional rights of black children were being violated, and ordered a desegregation plan be put into action. Historically, the Supreme Court had supported such remedies only in cases where intentional or de jure segregation was found to exist.

Within the first week of his tenure, the Chancellor had persuaded Judge Dooling to await the outcome of the appeal before requiring that a desegregation plan be submitted to the court. Testimony before the three-person Circuit Court of Appeals would not be presented until mid-January of 1979. The composition of that panel was relatively conservative. Hearing the case was Judge Murray Gurfein, a Nixon appointee, Judge Sterry Waterman, an Eisenhower appointee, and Judge Ellsworth Van Groafeiland, who had been placed on the court by President Ford. Arguing the case on behalf of the plaintiffs was James Meyerson of the NAACP. The Board of Education was represented by an attorney from the City Office of the Corporation Counsel. Also appearing before the court was an attorney for the State Commissioner of Education, who was a codefendant in the case.

Meyerson proposed to the court that Jackson High School could be integrated by busing 1000 of the 30,000 white students from the twenty other high schools in Queens. He also offered that additional white students could be obtained "from across the Nassau line," [44] thereby suggesting a metropolitan solution to the Jackson problem. However well-meaning these proposals might have been, they were still in disagreement with the legal precedents set by the Supreme Court.

On April 15th, the U.S. Circuit Court of Appeals voted unanimously to overrule the lower court decision of Judge Dooling, pronouncing, "The power of the federal courts to compel desegregation in state school systems is circumscribed."[45] Citing both the Swann and the Keyes rulings, the three-member panel drew a distinction between de facto and de jure segregation. It then proceeded to explain that judicial intervention is appropriate only in the latter situation. Thus ended the Jackson case.

From both a legal and political perspective, it can be said that the Jackson case was disposed of with little difficulty by the new Administration. One might reasonably argue that the plaintiffs never had a strong claim from the outset. Certainly, once the appeals process was in motion, the case was resolved with little fanfare. Nevertheless, the desegregation issue was still very much alive in Queens during the early part of 1979. While the Jackson appeal was still being deliberated, the NAACP had initiated another lawsuit in that borough. This time, it was alleging that Community School Board 24 in Middle Village had deliberately acted to create a racially isolated setting for minority children. The case in District 24 bore a remarkable resemblance to the situation that had already unfolded in Rosedale. It began when the school board decided to open two annexes in order to relieve overcrowding in Intermediate School 61. The 700 children assigned to the annexes had a disproportionate representation of black and Hispanic students. Moreover, the two annexes were located outside the school district boundaries in a neighboring district (25), reflecting an arrangement that had been worked out by the two school boards.

In a political sense, District 24 represented the most complex desegregation case with which the Administration had yet to deal. Since it concerned community schools, it went beyond the issues of Jackson, and, like Rosedale, touched upon sensitive questions concerning the Chancellor's authority vis-a-vis the districts under decentralization. It was even more complicated than Rosedale, because its resolution might impact several school districts instead of one. The creation of the two annexes had already brought two school boards into the legal debate. When the case was finally brought to trial, NAACP attorney James Meyerson argued for a remedy that would rezone Districts 24, 25, and 30 in order to promote desegregation.

Macchiarola was brought into court on March [illegible]th. His response to questioning revealed that the Chancellor had serious doubts about the merits of the suit, and a concern for its implications regarding decentralization. Warning against policies that would further encourage white flight and aggrevate race relations, he told U.S. District Court Judge Charles Sifton,

> If integration is a goal, we are going in the wrong direction as far as the city and the suburbs are concerned. We are short-circuited in obtaining integration by the limitations we have in the city school district...
>
> At this point, litigation will get blacks and whites at each other's throats and bring no progress.[46]

It was while he was under cross-examination by NAACP attorney Meyerson that Macchiarola came out most strongly for the protection of district perogatives as they were defined by the decentralization law. Meyerson had asked the Chancellor what effect community school district lines had on his ability to promote integration. Macchiarola responded,

> Of course it affects our ability to do it. We had picket lines around the Board of Education in the 1960's because the Board of Education was told it didn't listen to the community... Decentralization moved the decision making process to the districts in lots of ways...There were some benefits and some costs.[47]

When asked by Meyerson about the possibility of rezoning Districts 24, 25, and 30 to promote integration, the Chancellor told him, "If you get 24, 25, and 30 to agree, I'll do it." "What if they don't agree?" asked Meyerson. "I have to respect the policy of decentralization," responded Macchiarola.[48]

On November 14th, Judge Sifton ruled that community school officials were responsible for "some, but not all" of the segregated school conditions in District 24.[49] He thus ordered them to submit an appropriate remedial plan by the end of the year. The Judge found that the plaintiffs had "failed to establish that the segregated conditions in middle-level schools in District 24 in general are the result of intentional segregation..." He noted that demographic patterns had been partially responsible for the conditions that had evolved. However, he also found the establishment of "additional segregated educational facilities" in the annexes to be "constitutional violations." In ordering a remedy, Judge Sifton suggested that a proposed plan could include the mandatory busing of some white students, but he also expressed hope that such action could be avoided.

By the time the Sifton order was handed down, Community School Board 25 had already closed one of the I.S. 61 annexes. In addition to this, the Chancellor's Office had developed a plan with Queens College to open a demonstration school (I.S. 227) in District 24 to help alleviate the problem of racial isolation. Under the plan, I.S. 227 would recruit students on a borough-wide basis with a certain percentage of its 350 seats reserved for District 24 applicants. I.S. 227 had originally been scheduled to open as a regular intermediate school in September of 1977 in response to the overcrowding situation in District 24. It was delayed because of construction problems. When the NAACP brought its suit over the annexes in early 1979, Macchiarola's staff began discussions with the college to explore the possibility of establishing a demonstration school. The Chancellor had mentioned this developing plan during his March court appearance, hoping that it would eventually contribute to a solution. The Louis Armstrong Demonstration School (I.S. 227) was opened in September of 1979. Negotiations between the Chancellor's Office and Community School Board 24 were somewhat delayed because of disagreements over the racial breakdown of the applicant list submitted by the district. Finally, with the momentum provided by Judge Sifton's November decision, an agreement was reached which assigned approximately one third of the 350 seats in I.S. 227 to students from District 24. At that point, the desegregation dispute in District 24 was quietly settled.

Race remained painfully relevant in Queens. The next scene of conflict was District 26 in the Bayside-Douglaston sections. According to a memorandum of understanding signed in 1977 by the Chancellor's Office and the U.S. Office for Civil Rights, the City school system is to conduct an annual ethnic census of students and staff. This data is to be submitted to OCR as part of an annual review for monitoring compliance with the federal civil rights acts. The agreement was made in response to a federal investigation of staff integration. Failure to abide by its terms can jeopardize elegibility for federal funding. In 1977, Community School Board 26 refused to conduct the required census. As a result, Chancellor Irving Anker, after much futile negotiation, suspended the school board for nearly a month, and deployed his own personal staff to collect the data.

In November of 1978, the school board informed the new Chancellor that once again it would not cooperate in the administration of the annual census. It was joined in that threat by the school board in its neighboring district (25), which is also in Queens. Community School Boards 25 and 26 were among a group of eight which had initiated a federal suit challenging the Chancellor's authority to conduct ethnic surveys in accord with the OCR agreement.[50] Macchiarola made several attempts to persuade the two school boards to comply with the standing agreement while their appeal was pending. Finally, under the threat of suspension, the school board in District 25 voted to collect the data "under protest." However, District 26 would not.

What emerged from this situation was a long, arduous legal debate between the Chancellor and the school board of District 26. In January of 1979, the school board obtained a show cause order from a State Supreme Court which prohibited the Chancellor from suspending or removing the elected school board without a judicial trial or hearing. In the following month, Macchiarola took the case into federal court. There, Federal District Judge Jack Weinstein refused to lift the state court order forbidding the Chancellor to suspend the board. However, the Judge did rule that the Chancellor could supercede the school board's actions and send his staff into the district to collect the data. That decision was supported by another ruling of the State Supreme Court. On June 25th, Macchiarola superceded Community School Board 26, appointed Louise Latty, a member of his staff, as trustee of the district, and assigned his Special Assistant, Joseph Saccente, to conduct the census of pupils and staff. Those events would be repeated in the following year (1980), when the Chancellor would once again supercede the school board and Saccente would be sent to collect the data. The long battle of wills between Macchiarola and District 26 would not end until May of 1981, when the United States Supreme Court refused to review the school board's case protesting the legality of the ethnic census. One week later, the school board voted 5 to 1 to collect its own data.

There was a consistent pattern of behavior exhibited by the Chancellor with regard to desegregation. He was not a militant advocate. His Administration's approach to racial equality would focus on effective instruction for the poor. He was wary of the connection between forced racial mixing and white flight. A former community school board president, he was reluctant to intervene at the district level. He would prefer to have the districts resolve their problems locally. However, experience had also shown that once a ruling of law was made with regard to desegregation, Macchiarola would aggressively pursue the set remedy. He would do whatever was necessary in order to comply with the law. And what was necessary would usually be determined by the behavior of the defendant parties to the case.

As the history of New York has it, most problems with segregation can be resolved peacefully through voluntary plans. However, those cases which are the exceptions to that rule are usually the ones which attract the most attention. They are the ones which absorb the most energy, inflict the most pain, and bring out the worst in people. Rosedale was that kind of case. It was New York's premiere exception. It would demand the strongest action.

THE COMMUNITY ARENA

Rosedale worked its way into the spotlight early on in the life of the new Administration. As it may be recalled, the first day of school in September of 1978 was occasioned by a sit-in at I.S. 231, launched by thirty black parents to demand the closing of the predominantly white annex established by the school board. The demonstration would last four days. By its end, the Office for Civil Rights coincidentally issued its letter of findings stating that the annex in Rosedale constituted a racially identifiable school that was in violation of the Civil Rights Act of 1964. The school board in District 29 was given ninety days in order to develop a plan to correct the situation. When the case first broke open, Macchiarola decided to remain in the background, hoping that the school board and OCR could work out a reasonable solution to the problem. However, the mood in the district was far from conciliatory. The school board itself was polarized, with the six white and the three black members meeting separately to develop their own plans. In the meantime, black community leaders from Laurelton were persuading minority parents to remove their children from the predominantly white annex, in order to make the existence of the facility less legally defensible.

Between September and December of 1978, several negotiation meetings took place between Community School Board 29 and representatives of OCR in an attempt to work out a compromise. On December 11th, the white majority on the school board submitted two plans to OCR. One plan would have closed the annex and created seventh and eighth grades in the predominantly white elementary feeder schools for those white children attending the annex. Under this plan, black children attending the annex would be returned to the predominantly black main facility of I.S. 231. The other plan submitted by the school board would have kept the annex open and maintained the status quo. Both plans were rejected by OCR because, according to its director David Tatel, "they ignored the issue of the segregated school at I.S. 231."[51]

Shortly thereafter, the three black members of the school board submitted their own plan to OCR. However, OCR would not accept the plan because it did not represent a proposal agreed upon by a majority of the school board. On December 28th, the white majority submitted its third proposal to OCR. It called for the complete closing of I.S. 231 and the creation of seventh and eighth grades in all seven of the elementary feeder schools for children in attendance. OCR rejected that plan in early January, stating that it "further segregated the affected students." [52] In the meantime, the OCR deadline for an acceptable proposal had expired.

On April 5th, approximately seventy parents, mostly white, attended a school board meeting in District 29. During that meeting, the school board, with parental support, voted 6 to 1 to maintain the I.S. 231 annex in defiance of the orders that had been received from OCR. Desiree Greenidge, the only black board member attending the meeting, cast the one dissenting vote. David Bluford and Charlotte Webb, the two other black members, were holding their own meeting with parents at P.S. 181 in Laurelton.

In mid-July and early August, representatives from OCR again spoke with attorneys from District 29 with the hope of reaching an acceptable agreement. There was no progress. On August 20th, school board attorneys informed OCR that "under no circumstances could the District adopt and implement a desegregation plan this September." [53] Four days later, OCR announced that it was initiating administrative enforcement proceedings against both Community School Board 29 and the central Board of Education designed to withdraw federal funds from the district. The school board was given thirty days to either integrate the school or challenge the charges. At that point, the Chancellor began to exert verbal pressure on the school board to take some necessary remedial action, but he still refrained from direct involvement in the case. On August 30th, a statement was issued by the Chancellor's Office through an intermediary stating,

> The Chancellor feels it is incumbent upon the local board to change the situation...But since the Office for Civil Rights has put pressure on the board, he is going to stand back and see what happens now.[54]

In September of 1979, the annex opened once more for the third consecutive year. In the meantime, black and white school board members began to work together to develop a response to OCR. Any plan for rezoning the district needed approval by the Chancellor. Macchiarola informed the board that he would not approve any proposal that did not have biracial support on the school board. After many abortive attempts at a compromise, it appeared that an impasse had finally been reached in February. A majority of the school board tentatively agreed on a plan that had been designed by David Bluford, a black member. According to its terms, the annex would be closed, and P.S. 38 in Rosedale would be converted into an intermediate school with a more racially mixed feeder pattern. A science magnet program would be developed at I.S. 231.

The school board proposal was not well received by OCR, which claimed that its provisions did not address the problem of racial isolation in the I.S. 231 main building. However, Macchiarola stated that he would support the plan, regardless of the position taken by OCR, so long as it had both white and black support on the school board. When the board met in March to officially approve the proposal, a debate emerged over its details. Bluford, its chief architect, reversed his position, withdrew his support, and walked out of the meeting. At the end of a rather heated discussion, the board then voted 6 to 2, along racial lines, to approve the plan in Bluford's absence.

May of 1980 was the time of the tri-annual community school board elections in New York. In District 29, that provided the forum for a racially charged political contest pitting Rosedale against Laurelton. There were fourteen candidates running for the nine seats available on the board. Seven black candidates formed a "Unity Slate" in opposition to seven white candidates who ran on a "Community Slate." When the balloting was completed on May 6th, the blacks picked up one additional seat from the three they had held since the previous election. However, the whites maintained a 5 to 4 majority on the school board.

The community school board election in Distirct 29 was more than a symbol of the racial polarization that plagued western Queens. It was a clear illustration of a situation where a white constituent electorate chooses the governing board of a school district which serves a primarily black and minority clientele. While the racial composition of the school board of District 29 was representative of the general population of its resident community, it was less representative of the student body of the schools. That dichotomy between constituent and client was a major force behind school politics and education policy at the community level.

THE CITY AND STATE ARENAS

On May 30th, the Chancellor informed the school board in District 29 that he would not approve the desegregation plan it had adopted, since the proposal no longer had minority support, which was the contingency he had originally set for approval. On June 11th, he ordered the school board to close the annex and return its pupils to the main building of I.S. 231 for September. With the clock ticking away and administrative proceedings by OCR already in motion, Macchiarola wanted to resolve the annex issue before the schools were closed at the end of June. When the school board refused to carry out his order, Macchiarola superceded it. On June 17th, he deployed a member of his staff to carry out the necessary administrative procedures to reassign the annex students to the main school building for the fall semester beginning in September.

School board president Joseph Albergo accused the Chancellor of "bucking under the pressure of the minority." [55] He pledged to appeal Macchiarola's action both to the central Board of Education and in the state courts. On the evening of June 23rd, approximately 700 parents, mostly white, met at P.S. 138 in Rosedale, and raised in excess of $3000 in order to launch a legal battle against the Chancellor. A few days later, Macchiarola received a letter from Queens Borough President Donald Manes urging him to reverse his position on the school board plan. Manes warned, "The white residents of Rosedale are adamant. They will not send their children to I.S. 231..." [56] Manes sent a copy of his letter to Board of Education President Joseph Barkan, and requested to speak to the members of the Board before it acted on the District 29 appeal against the Chancellor. Board President Barkan happened to be the Queens member of the central Board of Education. This meant that he was an appointee of the Queens Borough President. Manes also came to the dispute with the reputation as a strong advocate of public education, and he was an important ally on the Board of Estimate each year when the Board of Education would seek approval for its executive budget.

The Board of Education handed down its decision concerning the District 29 appeal on July 23rd. Attorneys for the local board had argued that the Chancellor's withdrawal of support for the desegregation plan, based upon the reversal of the minority position, was "inappropriate and arbitrary." They contended that since OCR proceedings were still continuing, the burden of proof concerning segregation remains with OCR until an administrative court judge makes a decision. The Board of Education disagreed. It ruled that in light of the OCR findings, which is the "level of initial jurisdiction," the action of the community school board is "contrary to law." [57] The Board therefore upheld the Chancellor's actions as being neither arbitrary, capricious, nor contrary to law, and dismissed the district appeal.

On August 13th, a group of approximately 300 parents met in Rosedale and voted to defy the Board of Education order to send their children to I.S. 231. Instead, they vowed to set up a community-run school in the annex. Within the next week, school board attorneys took their appeal into the State Supreme Court. Contending that the Chancellor had exceeded his statutory authority in superceding the local board, they petitioned Justice Yorka Linakis to enjoin Macchiarola from closing the annex. They also warned that the transfer would create irreparable harm to the children involved, and would provoke parents to withdraw children from the Queens public schools. The Chancellor was represented by City attorney Mary Tucker. She attempted to persuade the judge that the issues in question were educational in nature, not legal, and that the proper forum for an appeal was the State Commissioner of Education, not the courts.

There was as much political reasoning behind the Chancellor's position in court as there was legal thinking. School officials wanted to get the case out of the Queens courts. Most state judges sitting on the bench in that borough were products of the Queens Democratic political organization. Many of them personally owed their political and judicial careers to Borough President Donald Manes. The white electorate of Queens had often made its position known on the question of school desegregation. Intentionally or not, there was probably a good chance that the state judiciary in Queens was predisposed to the position of the Rosedale school board. On August 21st, Justice Linakis found that the issues before the court were within the proper jurisdiction of the state judiciary. She ordered a trial, and the case was assigned to State Supreme Court Justice Martin Rodell.

Between the time of the trial and the time that Justice Rodell handed down his decision, a meeting was arranged in Macchiarola's Office by Queens Congressman James Scheuer. It was attended by school board President Joseph Albergo, Vice-President Doloris Grant, Charlotte Webb and Rupert Clark, two black members of the school board. Also invited to the meeting were officials from the Office for Civil Rights. Macchiarola proposed a compromise plan. Assuming the reassignment of the predominantly white student body from the annex to the main school at I.S. 231, the Chancellor recommended that many of the graduates from three black elementary schools who usually attend I.S. 231 be reassigned to another school. This would allow the percentage of non-minority students at I.S. 231 to increase from 12% to 25%. The plan was well received. Everyone left the meeting acknowledging that progress had been made. They would all report back to their respective constituents and give the proposal careful consideration. However, the spirit of hope was not long-lived.

Four days after the meeting in the Chancellor's Office, Justice Rodell released his decision. Rodell ruled that Macchiarola's order to close the annex was "not predicated upon any sound or accepted educational principle" but "solely upon the wishes of the Office for Civil Rights."[58] The Judge also pointed out that "no determination has been made by the federal government with reference to the withholding of funds."[59] While the Court recognized the authority of the Chancellor to refuse a plan submitted by the local school board, it vacated and annulled his order to close the annex. In a subsequent judgment, Justice Rodell instructed Macchiarola to propose a plan of his own which is "consistent with sound educational principles, City Board policy, and law."[60] This plan was to be prepared no later than October 15th. Community School Board 29 was to be afforded "an opportunity of responding thereto and to submit alternative suggestions..." within a period of one month from the time of the initial submission.

The actions by Justice Rodell certainly worked to put the local school board in a stronger position vis-a-vis the Chancellor. Now it was his responsibility to come up with a workable plan which the school board would respond to and comment on. Moreover, the continued operation of the annex was assured at least until February. Thus, in September of 1980, the controversial annex of I.S. 231 would be opened in Rosedale for the fourth consecutive year. The enrollment at the annex remained about 60% white, while that at the main school in Springfield Gardens was about 98% black.

Macchiarola produced his plan, as expected, on October 15th. Under its terms, the annex would be allowed to remain open beyond February. However, it would require that the racial composition of the annex and the main facility be the same. The zone of I.S. 231 and the feeder schools would not be changed, and enrollment in the main building would be limited to 1140 students. On October 23rd, after a raucous meeting marked by accusations and denunciations, the white majority of the Community School Board voted to reject the Chancellor's plan. In another 5 to 4 vote along racial lines, the school board decided to send a letter to the Chancellor which included the following statement:

> We believe that the plan is inconsistent with the terms of Justice Martin Rodell's order of September 5th, 1980, and that our students, both black and white, will suffer serious educational consequences should they be compelled to move midyear.[61]

The message of the school board came through very clear. They would not cooperate in the implementation of the Chancellor's new plan. Macchiarola responded with a letter to board President Joseph Albergo instructing him to direct the principal of I.S. 231 to close the annex and return the students to the main building by February 2nd, the first day of the spring semester. The Chancellor also advised Albergo that if the pupil capacity of I.S. 231 proves to be too limited, he was prepared to order the transfer of special education classes then housed in I.S. 231. According to the Chancellor's figures, the combined enrollment of the I.S. 231 main facility and annex was 1392, including 50 special education students. While this total was in excess of the 1244 student capacity of the school, the rate of overutilization was not unusual so far as Queens intermediate schools go.

THE CONFLICT ESCALATES

On Thursday, November 21st, the District 29 school board voted (again 5 to 4) to direct principal Reginald Landeau to take no action to implement the Chancellor's most recent order to close the annex. At the same meeting, the white majority voted once again to appeal Macchiarola's action to the central Board of Education. On the following Sunday, about 300 residents from Rosedale organized a demonstration to protest the Chancellor's position on I.S. 231. The demonstrators blocked traffic for forty-five minutes on the Sunrise Highway, a major artery connecting Queens and Nassau counties, as angry motorists blew their horns, shook their fists, and yelled insults at the Rosedale protestors. This dramatic action was the first of several which, within the next two months, would convert the desegregation controversy into a major media event on the New York political scene.

In early December, a federal Administrative Court judge finally delivered a long-awaited decision concerning the original OCR findings and proceedings initiated to terminate federal funding to District 29. Judge Walter Alprin's findings in the case were quite unambiguous. He ruled:

> While cloaked in such guises as relieving overcrowding in other schools, or avoiding racial physical incidents alleged but never proven...the various plans (of CSB 29) were in each place put forth with the obvious intent of retaining a white majority in the 7th, 8th, and 9th grades of the School District's white community...[62]

Judge Alprin ordered that federal funds administrered by the U.S. Department of Education be terminated in pursuance of the Civil Rights Act of 1964. Another administrative decision would be needed in the Department of Education to determine how and which funds were to be withheld, and the school board retained the right to appeal the decision to either the Secretary of the Department, or the federal courts. However, the Administrative Court decision added much force to the Chancellor's position, both politically and legally, and would even strengthen his hand with regard to pending litigation before the state courts.

On December 11th, the same day that they presented their appeal to the Board of Education, members of Community School Board 29 requested a "conciliation meeting" with the Chancellor. Macchiarola would not attend the meeting, but he instructed members of his staff to carry it out in his place. Community School Board President Albergo was seeking permission to leave the annex open through the spring term until June in order to prevent any disruption in the educational process. Under directions from the Chancellor, Macchiarola's staff replied with a flat "No." That was the end of compromise. At the beginning of the next week, Rosedale parents launched a three-day boycott of the annex and of the two white elementary schools (P.S. 138 and P.S. 195) from which the annex students were recruited. As parents picketed around the school buildings, total attendance in the schools dropped from 1576 students to 51. On the last day of the boycott, the Board of Education handed down its ruling dismissing the appeal of the Chancellor's decision.

Macchiarola had no intention of letting up on the pressure anymore. According to his instructions of December 16th, the school board was to direct the I.S. 231 principal to submit a plan for closing the annex within three days. Those orders were never carried out. On December 22nd, Macchiarola wrote Albergo another letter. This time, Macchiarola informed Albergo that he was superceding the school board. He was appointing his Special Assistant, Joseph Saccente, as trustee of the district, and granting him "all the powers and duties attending implementation of my order of December 16th, 1980." [63] Saccente was one of Macchiarola's top troubleshooters. A twenty-year veteran of the school system, he had served on the staffs of two previous Chancellors. In 1968, Saccente had played a major facilitative role in converting the administrative machinery of New York's centralized school system to a structure that was compatible with decentralization and community control. He had been personally involved in every district suspension or supercession since the implementation of decentralization, including those that had been ordered by Macchiarola. Now his charge was to enter I.S. 231 and carry out the pupil programming and exchange of records required to transfer 325 students from the annex to the main building.

Macchiarola's second supercession of the Queens school board within six months brought an immediate and angry response. Queens Borough President and City Board of Estimate member Donald Manes fired off a public letter to the Chancellor urging him to reverse his decision and allow the annex to remain open until June. He called Macchiarola's position "educationally disruptive," and argued:

> The fact that outside of a handful, all the black parents, as well as the white parents, kept their children from attending school during the three-day boycott last week, must stand for something. [64]

Manes suggested that the Chancellor should meet with black and white parents whose children attend the annex in order to "try to arrive at an amicable solution." The Manes letter arrived about a week after Macchiarola had submitted his 1982 executive budget to the Board of Education. The Chancellor would need Manes' support on the Board of Estimate in order to have that request converted to the dollars that were required to carry out his new program initiatives, including the recently proposed and controversial Promotional Policy.

Macchiarola, however, would not give any ground. He returned a letter to Manes, advising the Borough President that a federal judge had found the creation of the annex resulted in intentional segregation. He rejected Manes' suggestions outright, and further chided the Queens official:

> Your letter offers no constructive plan to remedy past discrimination...your proposal that I meet with parents from the annex overlooks the fact that these parents do not represent the district as a whole.[65]

With respect to the boycott that Manes had referred to, Macchiarola wrote, "The boycott stands for the abdication by the community school board of its responsibility to maintain education for all children in the district."[66]

On January 8th, attorneys for the school board brought the case back into state court, seeking a preliminary injunction that would keep the annex open while a trial could be held on the matter. This time, the parties to the legal debate would stand before a different judge. Hearing the case would be State Supreme Court Justice Sidney Leviss. Prior to his appointment to the state court, Leviss had served as Borough President of Queens. Before that, he had been Deputy Borough President. He was the predecessor of Donald Manes, another product of Queens County political organizations. However, the Chancellor still had a strong legal case. He would come into court with the backing of both the OCR findings and the federal administrative judge's decision. The Board of Education had twice ruled in his favor with regard to the educational merits of the case.

Leviss refused to grant the preliminary injunction sought by the school board, claiming that a trial was not necessary since one had already been held by Justice Rodell in August. He said that the only thing for his court to determine was whether the Board of Education and the Chancellor had complied with Rodell's order. He promised a decision before February 2nd.

After two weeks of deliberation, Justice Leviss finally handed down a ruling. His findings were a direct response to the arguments made by school board attorneys who challenged the educational merits of the Chancellor's order to close the annex midyear. The judge found that "the only issues left involve questions of administrative discretion and adoption."[67] These, he ruled, are "issues of fact and educational policy, not of law." Under state law, such questions require the exhaustion of administrative appeals. Leviss, therefore, granted the school board a two-week stay, ordering the annex to remain open for 15 days while an appeal could be made to the Commissioner of Education.

Neither side to the dispute was very pleased with the court's decision. There appeared to be a lack of consistency between Leviss' original pronouncements during the hearings, and his final declaration two weeks later. It seemed to leave the whole matter dangling in the air. Members of the Rosedale school board realized that the case would now be taken out of the jurisdiction of the state courts in Queens and turned over to the State Commissioner, where the Chancellor had wanted to see it from the beginning. Education officials at Livingston Street were aware that leaving the annex open beyond the first day of the new term would strengthen arguments concerning the disruptive nature of the school closing. Hence, the Leviss decision drew adamant criticism from both camps.

Black school board member Charlotte Webb observed,

> It's a political decision. How could he rule in favor of us and then do something like that? He is playing both sides of the street as far as I am concerned. What he should have done, if he felt that way, is to have ruled in their (the white majority's) favor so the kids would know where they were going to be.[68]

White school board member Doloris Grant lamented,

> I thought the judge was going to make a decision. What he's really doing is passing it into another court. What he did was just pass the buck to someone else, and it took this time for him to pass the buck. Unfortunately, there are kids involved here, and these kids don't know if they are coming or going.[69]

James Meyerson of the NAACP, which by now was an amicus in the Rosedale case, declared,

> The bottom line is that it's the ultimate cop-out. It took him two weeks to make this decision, and then he gave them two weeks to go to the Commissioner - at the same time limiting any action (to close the annex). He did this with the full knowledge that he would be taking it past the February 2nd date.[70]

State Commissioner Gordon Ambach lost no time in issuing a ruling. On January 29th, the day before the annex was scheduled to close according to Macchiarola's order, Ambach upheld the Chancellor, proclaiming,

> I will not substitute my judgment for that of a board of education in the absence of a showing that the challenged decision is arbitrary, capricious, or in some manner contrary to State law or to sound educational policy.[71]

On the next day, school board attorneys were again in state court, this time appealing the Leviss decision to the State Appellate Division, making one last-ditch effort to have the annex kept open. However, by the time the District 29 lawyers argued their case before Justice Frank Gulotta, Saccente had already closed the annex and implemented the necessary procedures to effect the student transfers. This made the annex closing, for all practical purposes, a moot issue. Justice Gulotta ruled that since "all the necessary preparations attending the scheduled closing have already been completed," the stay requested by the school board "would not substantially serve to preserve the status quo ante." [72] However, finding that the matter before the court was "one of great concern to the affected students," the Judge did rule that the case warrented a hearing before the full five-member Appellate Division of the State Supreme Court.

While the Gulotta ruling served to prolong the litigation surrounding the District 29 controversy, the Chancellor's Office was now confident that it had laid the groundwork for a final victory in court. It had already been successful with regard to several administrative and judicial decisions. In addition to OCR and the federal administrative court judge, Macchiarola had now received the backing of the State Commissioner, the lower courts, and the Board of Education. Now the matter had been taken out of the Queens-dominated jurisdiction. The decision before the higher court no longer concerned the Chancellor's authority or judgment in closing the annex, but whether, in fact, he should be forced to reopen it. According to George Shebitz, the senior attorney handling the Rosedale case for the Chancellor, "Our office was quite encouraged by the time the case had reached the Appellate Division. It appeared that a satisfactory resolution was imminent." [73]

However, the final rounds of the Rosedale battle would be fought not only in the courts, but also in the political arena and in the streets. In a sense, the Rosedale controversy was a classic study of community activism. As the parties involved began to recognize that the pursuit of their goals through normal and accepted institutional channels of the government would not result in the desired outcome, they sought other means. This contributed to increased militancy on the part of white residents from Rosedale. Such extremism would further provoke drastic measures from the other side.

TAKING TO THE STREETS

On the evening of Friday, January 31st, a few hours after the Appellate Judge refused to overturn the Chancellor's order, about 200 Rosedale parents showed up at the closed annex in the P.S. 138 school building, and began what they promised would be a week-long sit-in. On the next day, the group barricaded themselves in the school cafeteria in order to prevent workers from removing furniture that was to be taken to the main I.S. 231 facility in Springfield Gardens. On Sunday, a protest rally involving more than 400 parents was held at the site, as Mayor Koch, appearing on the WCBS-TV show "Newsmakers," commented on the situation. Koch urged the protestors to leave the occupied building and obey the Chancellor's order and the law. However, when questioned further, Koch admitted, "I don't happen to believe busing is helpful to the school system...In fact, it segregates."[74] The latter statement led Rosedale residents to believe that perhaps they could find a sympathetic ear at City Hall.

On Monday morning, Koch's office was barraged with requests from organizers of the Rosedale group that he become involved in the situation and render them assistance. The Mayor noted that he understood their concerns and promised that he would ask his own counsel to "look and see if the facts would warrant taking an appeal, and if an appeal is possible, we will help..."[75] That same afternoon, the full membership of the five-person Appellate Court delivered its ruling that had been requested by Justice Gulotta. In a unanimous decision, it declared that "such matters of educational policy" are "inappropriate for resolution by the courts."[76] By dismissing the appeal of the Queens school district unanimously, the court rendered it legally impractical for the Rosedale group to further pursue their case through state judicial channels.

Koch's statements on the Rosedale dispute and his expression of willingness to involve himself stirred quite a commotion. Macchiarola was furious. He was immediately on the phone with top Mayoral aids to register his disgruntedness. He did not want to see the Mayor involved, especially on the side of the school board. A group of black ministers and political leaders, who had already begun to pressure Queens Borough President Donald Manes, also reacted. They told Koch he had the facts of the case wrong, and warned him to stay out of it. When Koch was finally informed of the Appellate Court decision, he softened his position. On Tuesday, Koch issued a statement declaring,

> I know the frustrations of the parents, but there has been a finding by a judge that there has been intentional discrimination, and whenever there has been intentional discrimination, the city has no recourse but to support the court order ending that act.[77]

While public officials from around the city were debating the issues surrounding the Rosedale controversy, the educational process in District 29 was being severely disrupted. With the sit-in continuing at P.S. 138, the home of the closed annex, only 22 out of 715 of the pupils at the elementary school were in attendance. Only 66 out of the 326 transferred annex students showed up at the main I.S. 231 facility where they were supposed to begin classes on Monday. In a show of sympathy to the demonstration, parents from P.S. 195, the other predominantly white Rosedale elementary school, also kept their children home, bringing attendance down to 5 pupils from a total enrollment of 550.

On Thursday evening, a group of about 800 Rosedale residents held another rally, this time to raise money to take their legal battle into the federal courts. The group cheered as Democratic-party District Leader Charles Cippola informed them that Borough President Donald Manes had just met with several of the high-level officials in the Koch Administration to let his position be known on the desegregation issue. However, that afternoon, the Mayor had directed his Corporation Counsel, Allan Schwartz, to obtain a court order to oust the demonstrators from the occupied elementary school and annex. The Mayor pledged:

> I'm encouraging them (parents): Take the kids back to school. We are going to do our damndest to make it (I.S. 231) a safe school. We are going to do our best to make it one of the best schools. [78]

In the meantime, the Chancellor had sent a telephone relay to Community School Board 29 admonishing it for failing "to take any action to remove the persons illegally congregating." [79] He damanded that the members of the board come to Livingston Street for a "conciliatory meeting." That meeting took place on Friday, February 6th, at which point the sit-in had been going on for a full week. The meeting was attended by one black and three white members of the board. The Chancellor was represented by Joseph Saccente, who had been serving as the trustee in I.S. 231. Saccente noted that the demonstrators had made their point. He asked the Rosedale representatives to urge the approximately 40 remaining parents to leave the school without incident. He told them that the Chancellor was prepared to cite the demonstrators for trespass. The school board members promised that they would make such an appeal, but expressed doubts that the parents would listen. Their doubts were well-founded. On Friday evening, the school building remained occupied.

At dawn on Saturday, two police vans pulled up in front of the doors of P.S. 138. Approximately 70 uniformed officers filed out. Police Chief Patrick Murphy, four gold stars beaming from his collar, politely asked the protestors to leave the school. Four refused and were arrested. The rest picked up their belongings and left quietly. A few hours later, Macchiarola held a press conference and announced that he had asked Mayor Koch "to put your police at my disposal." He further explained,

> There's no room for compromise when someone is in charge of a school building and they ought not to be. We had to maintain a very important principle. We expect the children to return to school...What's right for the children is to go to school.[80]

In the afternoon, about 200 demonstrators returned to the P.S. 138 school site and peacefully picketed outside the building. The group included the four who had been arrested earlier that morning.

The next week was occasioned by numerous rallies and demonstrations. At one Queens meeting, 600 white Rosedale residents chanted, "Manes for Mayor," as the Borough President appeared to announce his support of the continuing school boycott. By that time, Manes and Koch had already engaged in an angry verbal battle over the police action at the annex. In the midst of such fury, Koch agreed to meet briefly with four of the boycott leaders as 150 parents and children from Rosedale marched around City Hall. Koch again tried to persuade the group to send their children back to school, and promised to ask the Chancellor to meet with them. Macchiarola, however, stood firm. He refused to talk with the boycott leaders so long as there were duly elected representatives of the community sitting on the school board. It was becoming increasingly apparent that the school board itself was now losing control of the situation to a more militant element in the community. Community School Board President Joseph Albergo had already begun to urge parents to send their children back to school, but boycott leaders, led by Linda Ovadias of the Rosedale Block Association, were developing a momentum of their own.

As the boycott went into the second week of the new semester, word began to circulate among its leaders concerning a "mystery caravan." Saccente, fearful of another incident at a school site, issued orders barring anyone but students and staff from I.S. 231 and its three feeder schools (P.S. 38, P.S. 138, and P.S. 195). On the eve of Lincoln's Birthday, it finally happened. A train of 100 cars left Rosedale and headed towards Brooklyn for what was identified as a "secret destination." When the motorcade passed through the Midwood section of that borough, it became clear that the secret destination was the private home of schools Chancellor Frank Macchiarola. By the time it arrived, the Chancellor's house was surrounded by police. That did not stop the demonstrators. As Macchiarola gathered inside with his wife and three small children, a group, more than 300 strong, formed a circle around the house, shined flashlights through the windows, and chanted, "No Annex, No School." The protest went on for two hours in the pouring rain. On the same evening, about eighty black residents from Laurelton held a two-hour vigil outside the home of Queens Borough President Donald Manes. They carried signs bearing the inscription "All Children Should Concern Manes, Not Just White Children."

Over the next several days, there were more demonstrations at the Queens Borough Hall and at City Hall. State legislators from District 29 held meetings with State Education Commissioner Gordon Ambach. By February 15th, only 105 of the 326 annex students had registered at the main facility of I.S. 231. Much to the credit of principal Reginald Landau, business at the Springfield Gardens school proceeded in an orderly fashion. Attendance was at 91%, several points above the citywide average. Nevertheless, the boycott would continue.

At the beginning of the third week of the semester, the boycott organizers met at the George A. McCrackan Democratic Association to finalize plans for the establishment of privately run "freedom schools" for children who had been kept home. On Tuesday, Macchiarola met with the full membership of Community School Board 29. All promised to cooperate to end the boycott. Saccente was instructed to hold a series of open nights at I.S. 231 so that parents could be invited to visit the school. The Chancellor conceded that he would meet with the boycott leaders if the school board deemed it necessary. In Queens, Borough President Donald Manes began meeting with a contingent of black political leaders who, by midweek, had persuaded him to take a more conciliatory approach towards the Rosedale situation. On Wednesday evening, Manes addressed a group of 1800 people at the Queens Democratic Committe, and urged parents to send their children back to school. Despite Manes' efforts, boycott leaders opened "freedom schools" at five Queens locations on the next day.

As the week ended, Rosedale residents petitioned State Education Commissioner Gordon Ambach to reconsider his decision supporting the Chancellor's order to close the annex. Finding that "no new evidence" nor "significant new arguments"[81] had been submitted by the petitioners, Ambach dismissed their application. Given the fact that the State Appellate Division Court had unanimously denied their prior appeal, the Commissioner's decision left only two other legal avenues open to the Rosedale parents. On the one hand, they might challenge the factual findings of the Office for Civil Rights and the federal Administrative Court judge through an appeal to the Secretary of Education. On the other hand, they might challenge the remedies ordered on constitutional grounds in the federal courts.

THE JUDGE DECIDES

On February 24th, the Rosedale parents filed a suit in federal district court on behalf of eight annex students - five white, two black, and one Hispanic - requesting that the facility which had now been closed for three weeks be ordered reopened. The parents, who were initiating their action independently of the local school board, contended that they feared losing the high quality education that had been offered at the annex, and objected to their children being "bused" two miles to the "overcrowded" and "segregated" intermediate school in Springfield Gardens. Judge Edward Neaher granted a show cause order and set a hearing for the next week on the question of a preliminary injunction for reopening the annex, pending a full trial on the overall merits of the case.

On the next day, four buses carrying nearly 200 supporters of the Rosedale school boycott appeared in Washington D.C. As the delegation formed a picket line around the federal building on Independence Avenue, which houses the Department of Education, Linda Ovadias and Sandra Petker met with top aides of Secretary Terrence Bell. Considering the critical position that the Reagan Administration had already taken on the subjects of school desegregation and forced busing, it was reasonable for the group from Queens to expect a sympathetic hearing in the Secretary's office. However, Bell's Chief of Staff Elam Hertzler explained to its leaders that the matter was now in federal court, and that the Secretary therefore had no jurisdiction over it.

The Washington meeting highlighted a basic flaw in the legal and political strategies of the Rosedale parents. If they had appealed the factual findings of the Office for Civil Rights and the administrative court judge, then the Secretary of Education would have been able to overturn the case. However, by accepting these factual findings, the parents were admitting to a situation involving intentional or de jure segregation. Given the past precedent set by the federal judiciary on this issue, it was highly unlikely that the court would overrule the previous decision.

While all parties to the case awaited the day of Judge Neaher's trial, Joseph Saccente of the Chancellor's Office began to hold meetings with the boycott leaders. Saccente urged the parents to send their children back to school and offered to set up an advisory committee to help the local district apply for $1.5 million in federal funds under the provisions of the Emergency School Aid Act. Saccente also instructed I.S. 231 principal Reginald Landeau to arrange an open house conference for the parents of students from the annex. In the meantime, a number of editorials began to appear in the local media which were critical of the behavior exhibited by the Rosedale residents, and demanded a return to normalcy in the Queens schools.

In response to claims by Rosedale parents that the main facility at I.S. 231 was a racially segregated (primarily black) school, a New York Times editorial advised the boycotters, "The way to start desegregating I.S. 231 is for Rosedale's white children to attend it." [82]

An editorial aired for two evenings on WABC-TV demanded that the original federal order, "should be carried out in the fullest" and that "there shouldn't be any concessions that will keep the students in the annex." [83]

Another editorial appearing in Newsday, a leading daily paper in Queens, aptly observed, "The struggle over Intermediate School 231's annex in Rosedale has reached a stage where a lot of people seem to have forgotten what schools are for." [84]

By the time formal testimony for the trial took place on March 4th, both the NAACP and the New York Civil Liberties Union received permission from Judge Neaher to participate as co-defendants. Attorneys for the Community School Board were arguing that busing students from the Rosedale annex to the Springfield Gardens school would exacerbate the problem of white flight in the district. George Shebitz, who was the major architect of the Chancellor's legal defense, pointed out that I.S. 231 was not a busing issue, since it did not involve any cross-district registration, and most children had access to the school by means of public transportation. At the end of the day's long trial, Judge Neaher reserved his decision on issuing a preliminary injunction against the annex closing. However, from the nature of both the testimony and the questioning that had unfolded that day, the fundamental weakness of the case presented by the Rosedale plaintiffs had become clearly apparent.

With negotiations between the Chancellor's Office and the Rosedale parents continuing, some signs of hope for an end to the school boycott began to emerge as the ordeal advanced into its fifth week. On March 2nd, a meeting took place at Livingston Street. It was attended by Joseph Saccente, who represented the Chancellor, Joseph Albergo, president of Community School Board 29, Charlotte Webb, a black member of the local board, and Linda Ovadias, the organizer of the boycott. In return for her promise to encourage parents to send their children back to school, Saccente gave Ovadias a seven-item list of assurances designed to enhance the educational environment at I.S. 231, and make the Springfield Gardens facility more attractive to former annex children. His list included the following points:

> 1. The principal of I.S. 231, after consulting with the PA (Parent's Association) will have the authority to employ the number and kinds of personnel necessary to insure a proper school environment. Such personnel would include school aides, school security guards, and a school safety task force.
>
> 2. The trustee (Saccente), principal, and PA officers will meet with a representative group of former annex parents to develop ways to involve these parents in various school activities.
>
> 3. There will be no cases of ethnic isolation in any classes.
>
> 4. The principal and trustee will report to parents on a monthly basis concerning the status of the school.
>
> 5. The trustee will request that the Police Department assign a patrolman to I.S. 231 for one hour at dismissal time every day.
>
> 6. Two-year SP (Special Progress) students who return to school by March 9th will be accelerated if they meet the requirements for acceleration.
>
> 7. There will be an after-school remedial reading program two days per week for former annex students and an equal number of main building students.[85]

Speaking on behalf of the Chancellor, Saccente also agreed that Macchiarola would review for approval any rezoning and/or open enrollment plans submitted by the local school board. He stressed, however, that any such plan would need both black and white support in order to contribute to a final solution of the situation in the district.

On Sunday, March 8th, Ovadias met with approximately 500 parents at the Rosedale Jewish Center and encouraged them to return their children back to school. Shortly thereafter, Saccente met with another group of approximately 50 parents at the Sons of Italy Hall and assured them that I.S. 231 would receive increased security so long as the situation there remained tense. On Monday, students began to return to the three schools affected by the boycott. It was reported that 608 of the 716 students at P.S. 138, and 435 of the 523 students at P.S. 195 showed up for class. Only 96 of the 306 former annex students appeared at I.S. 231 on that day. However, by the middle of the next week, approximately two-thirds of this total had enrolled at Springfield Gardens.

Judge Neaher issued his Memorandum and Order on March 17th. As expected, he denied the application for a preliminary injunction against the annex closing, stating that OCR's and the administrative law judge's findings "bar any conclusion that plaintiffs have shown probable success on the merits."[86] Citing the Swann case, Judge Neaher advised the plaintiffs from Rosedale:

> In the face of this constitutional obligation to desegregate, the phenomenon sometimes termed "white flight" is not a conterveiling consideration; nor can the concept of "neighborhood school assignment" be accepted where it in fact masks a pattern of discrimination.[87]

The United States District Court decision marked the end of a long legal battle over desegregation in Rosedale. However, it did not put to rest the ongoing political and racial infighting that had come to characterize the community. As the local school board went about the task of preparing a new zoning plan for review by the Chancellor, it continued to exhibit the kind of polarization that had given birth to the original conflict four years earlier.

Within a few days after the Neaher decision, the school board voted 5 to 4 along racial lines to distribute a new zoning proposal among parents in the district. The plan, drafted principally by board member Dolores Grant, would convert P.S. 195 in Rosedale into a predominantly white intermediate school. It was designed to assure that no students from Rosedale would go to I.S. 231, and only a limited number of minority children would be admitted to the new school. Needless to say, the black community reacted to the plan with outrage. At the March 19th meeting of the school board, Barbara Weisenfeld, a black member of the I.S. 231 Parent's Association, rose to her feet and scolded the white majority in a manner which was representative of the feelings of the minority community, declaring, "I think you ought to be ashamed of yourselves to stand up here and salute the flag and say...and liberty and justice for all." [88] Weisenfeld's statement was followed by a mutual exchange of accusations of racism.

A week later, the school board conducted formal hearings concerning the zoning proposal. Approximately 1200 spectators packed into a school auditorium built to hold 720 people as forty speakers, mostly black, filed up to the podium to attack the plan that had been put before the community. The school board had previously agreed to submit a formal proposal for the Chancellor's approval by April 16th. From the reaction of the black community, it was evident that the plan that had been put on the table by the five-person white majority was not a feasible one. When the school board met on April 9th to take a formal vote on the plan, the white majority split, as Fran Pomerance and Leo Rosen chose to abstain, and the four black members voted down the motion. Dolores Grant, surprised by the action of her white colleagues, stormed out of the meeting yelling at Pomerance. Linda Ovadias, who was one of more than 700 community residents observing the proceedings, followed Grant. When questioned on her vote, Pomerance said that she wanted to see the motion tabled. Rosen more explicitly admitted that he abstained "because I thought it was time to get the Chancellor involved."[89] Albergo adjourned the meeting immediately after the vote was taken.

Within twelve hours, all nine members of the Community School Board were in the Chancellor's Office for another attempt at compromise. Macchiarola complimented the group for not passing a zoning plan that would have aroused further hostility in the community. He promised to work with them to design a plan that would be acceptable to all segments of the district. Over the next two weeks, Dolores Grant and Charlotte Webb joined a cooperative effort with Community School Board President Joseph Albergo and Community Superintendent Florence Friedlander to develop a new freedom of choice plan for the district. When the school board met in a closed session on May 7th to take a formal vote on the proposal, it was rejected, with three voting for it, three against it, and three abstaining.

Fearful of a newly emerging stalemate, the Chancellor began to pressure the school board to support a plan that would encourage black parents in I.S. 231 feeder schools to send their children to I.S. 59, which is also located in Springfield Gardens. Doing so would both alleviate the overcrowding condition in I.S. 231, and decrease the proportion of black students, thereby allowing for a better racial balance. When Macchiarola sensed that the response to his recommendation was less than enthusiastic, he instructed Community Superintendent Florence Friedlander to meet with parents from P.S. 156 in Laurelton and P.S. 37 in Springfield Gardens in order to drum up support. At that point, James Meyerson of the NAACP accused the Chancellor of having made a deal with the boycott leaders that would reduce minority enrollments at I.S. 231. Members of the Federation of Laurelton Block Associations wrote the Chancellor a letter accusing him of circumventing the decision of the courts and harassing black parents. Macchiarola denied having made any deal with the white community leaders. He explained that the federal court order required action that would increase the proportion of white students enrolled at I.S. 231. He intended to move ahead with his idea.

On May 20th, Community School Board 29 voted across racial lines to approve a new zoning plan that had been supported by the Chancellor. The six-person majority included Albergo, Rosen, Pomerance, and three black members. Dolores Grant and Ann Spatola voted against the resolution. Shirley Rose abstained. According to the adopted scheme, the feeder patterns from elementary to intermediate schools in the district would be retained. However, parents would also be offered an option to send their children to I.S. 59. In order to make I.S. 59 more attractive, Macchiarola promised that he would free up money for special programs that would enhance the educational offerings of the school.

By the time school opened in September, Community School Board 29, with the help of the central Office of Funded Programs at Livingston Street, had managed to obtain $300,000 in federal ESAA funds for educational enrichment programs at I.S. 231. The central Board of Education allocated an additional $200,000 for similar programs at I.S. 59. White enrollment at I.S. 231 climbed to 11% of the 1163-member student body, a significant improvement from the 1% figure that had been recorded a year earlier. The enrollment data also showed that approximately 50 of the 326 annex students had chosen to leave the public school system and attend private institutions. On October 6th, 1981, Chancellor Macchiarola sent a letter to Community School Board 29 informing its members that the supersession that began in February was finally lifted, and that it was once again responsible for administering I.S. 231.

With the termination of the supersession, business proceeded rather smoothly and uneventfully at I.S. 231. The Springfield Gardens school which had been the center of a major controversy in four years virtually disappeared from the local media. Then, on March 29th, 1982, a story appeared in the Daily News. It included an account of a week-long open house being held at I.S. 231 for parents of prospective graduates from P.S. 138 and P.S. 195, the two elementary feeder schools in Rosedale. The story described how several supporters of the Rosedale boycott appeared before the parents and encouraged them to send their children to I.S. 231 because "the school has made an educational turnabout."[90] The story highlighted the "no-nonsense administration" of principal Reginald Landeau and the successful use of federal ESAA monies for the development of programs designed to reduce racial anxieties among students and parents.

Among those addressing the visiting parents was Community School Board was President Joseph Albergo, who was quoted as saying,

> Everything about the school has changed...When the school had problems, we told you about them...Now we have to tell you that things are running smoothly ...It would be foolish for this community to abandon this school now that it's in good shape.[91]

Albergo was joined by board member Fran Pomerance, who advised her neighbors,

> I've made my decision about September. I'm sending my child to 231. But don't take my word for it. Go and see for yourself.[92]

SUMMARY COMMENTS

Desegregation remains one of the most volitile issues in American education. Our more than twenty-five-year history with it has shown it to be a mixed experience, and public policy, as interpreted by the courts, has not been consistent. However, notwithstanding all the debate and the occasional confusion, we know more about the subject than we sometimes pretend. What is often perceived as an ambiguity of facts about the effects of desegregation, is more often an ambivalence of values. Whatever we think about the merits or disadvantages of the governmental mandate, the law is fairly straightforward on the question.

While the Supreme Court has modified the "all deliberate speed" formula of the Brown II decision, and has adopted a more sympathetic understanding of voluntary remedies as opposed to forced busing, the letter of the law today is quite clear with regard to the constitutional prohibition of intentional or de jure segregation by local school districts. While the question of intent has not been addressed by the Supreme Court with regard to Title VI of the Civil Rights Act of 1964, there appears to be a trend in the lower federal courts to uphold the intent standard. Our experience with desegregation provides us with certain undeniable facts concerning the outcome of various approaches. We know that forced racial mixing is more likely to motivate white flight than voluntary or "freedom of choice" programs. We know that carefully planned desegregation efforts will be less disruptive to the educational process than poorly managed interventions. We know that children attending school in an integrated setting are more likely to develop positive and healthy attitudes towards peers of another race than children in segregated institutions.

We also know that there is no conclusive evidence to suggest that minority children who attend integrated schools are more likely to develop positive attitudes about themselves than minority children who are racially isolated.

Likewise there is no conclusive evidence to claim that racial mixing has a favorable impact on the achievement levels of minority children. It might be said that what we sometimes claim to know about the impact of racial mixing on self-perception and achievement is more appropriately described in terms of what we do know about the characteristics of effective schools. To put it plainly, positive affective and learning outcomes are more directly related to quality instruction and competent school organization than they are to the racial composition of a student body.

Desegregation had never been a major item on either the educational or political agenda in New York City. This is at least partially due to the fact that racial politics within the schools has been more closely associated with decentralization, community power, and the neighborhood-school concepts, which are not usually linked to the ideas of integration or racial mixing. Of course, as this chapter shows, there have been exceptions to this rather tranquil and uneventful history with regard to desegregation. The NAACP in New York has served as an articulate advocate of desegregation, and has been in the forefront of judicial battles on its behalf.

In those cases where desegregation has become a relevant issue in New York, the major community and governmental actors have exhibited behavior that is similar to the norm established in other urban centers. Busing and forced racial mixing have been seen as major contributing factors to white flight. School officials and parents have been more receptive to voluntary approaches to desegregation, as demonstrated with regard to Mark Twain Junior High School in Brooklyn, and the Louis Armstrong School (I.S. 227) in Queens. The situation in Andrew Jackson High School serves as a striking example of the problems inherent in attempting to integrate an urban school system that is becoming increasingly homogenous in terms of its student population.

While the condition at Jackson is admittedly an extreme case of de facto segregation, it points to an emerging pattern that will become more typical of inner-city school systems like New York where the white enrollment is now below thirty percent.

Philosophically, the Administration of Chancellor Frank Macchiarola was committed to maintaining the moderate approach to desegregation that was characteristic of New York City prior to his tenure. Macchiarola had been a strong supporter of decentralization. His Administration would place a greater emphasis on raising the achievement levels of minority children. However, the Chancellor also demonstrated that in the face of a judicial mandate couched within the law, he would do whatever was necessary to remedy a violation. This was first demonstrated with regard to the collection of ethnic data in District 26. It was most visibly dramatized in response to the Rosedale situation in District 29.

The chronicle of the Chancellor's attempt to implement a federal desegregation order in Rosedale carries forward several of the fundamental themes that were presented in earlier chapters. It even goes beyond the kinds of cross-pressures imposed upon the Chancellor's Office that were documented in the previous cases. The Rosedale case involves multiple jurisdictions. While the federal Office for Civil Rights ordered that I.S. 231 be desegregated, there were other governmental institutions, most notably the state courts, which possessed the authority to limit the Chancellor's power to enforce the mandate. Before the OCR desegregation order could be carried out, legal and political victories had to be won within the federal Administrative Court, the State Supreme Court, the State Appellate Court, the State Education Department, the Board of Education, and the U.S. District Court.

Of course, the major political battles concerning the Rosedale situation were fought at the community level, within the school board. District 29 in Queens was representative of a far too common phenomenon at the local level in which a school board is controlled by and accountable to the white constituent electorate of a community at the expense of a predominantly minority service clientele. In this case, the school board also demonstrated a political capability to enlist the support of the Borough President, a host of local political figures, and, notwithstanding the strong reaction of the Chancellor, almost the Mayor.

Political scientists from the pluralist school have often suggested that the involvement of such a wide variety of public officials in school politics gives a superintendent (in this case the Chancellor) the advantage of picking and choosing among these actors to form coalitions on an issue-by-issue basis. This case begins to highlight the precarious nature of such coalition building on an ad hoc basis, for the adversaries one encounters during a given issue debate may carry over their animosity to the next issue. For example, by taking on Borough President Donald Manes with regard to the Rosedale issue, the Chancellor was risking the loss of significant support with regard to the executive budget. Community School Boards 26 and 29, which became involved in heated battles with the Chancellor on racial issues, emerged as two of the most outspoken opponents of his Promotional Policy.

There are two ways to view the prospects of constituency building for the urban superintendent. The optimist might say that the involvement of numerous actors in educational policy making gives one many potential allies from which to choose. The pessimist might claim that the current institutional arrangement provides the superintendent with numerous potential adversaries, all of which are capable of presenting obstacles to his or her objectives. The negative aspects of such an arrangement might also be exacerbated in a situation where the superintendent is determined to implement a significant amount of change. The more change-oriented a superintendent is, the more likely his or her actions are to arouse resistance.

The case study in this chapter has served to illustrate the number and variety of actors that can get involved in determining the outcome of an educational policy debate in New York. It provides us with one scenario which demonstrates the number of places at which something can go wrong when a superintendent attempts to alter a practice which is deep-seated in the politics and tradition of the existing system. However, notwithstanding the multiplicity of actors in this case, absent was the most formidable adversary which any superintendent could face in New York. That adversary is Albert Shanker, president of the United Federation of Teachers.

FOOTNOTES

1. Brown v. Board of Education, 347 U.S. 483 (1954). See, Richard Kluger, Simple Justice (New York: Knoph, 1976); J. Harvie Wilkinson, From Brown to Bakke (New York: Oxford University Press, 1979).

2. Brown v. Board of Education, 349 U.S. 294 (1955).

3. E.E. Schattschneider, The Semi-Sovereign People (New York: Holt, Rinehart, Winston, 1960), pp. 39-40.

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CHAPTER SIX

TAKING ON THE UNION

This chapter is a study of non-decisions. For nearly a decade during the mid-fifties and early sixties, political scientists and sociologists devoted a good deal of time, energy, and thought to the study of community power through the analysis of important policy decisions. As the conventional wisdom held, those individuals who participated in important policy decisions, dominated the decision process, and benefited from the results, were the true holders of power within a community. [1]

In 1962, Peter Bachrach and Morton Baratz wrote a seminal essay for the American Political Science Review that challenged many of the methods and conclusions put forth by their contemporary colleagues. [2] The two argued that those who truly held power in a community are the ones who have the ability to prevent issues that are contrary to their interests from becoming part of the political or policy agenda. These "non-decisions" are the questions that are never asked, the issues that are never raised, the policies that are never seriously challenged. The groups and individuals who are the gatekeepers of the decision process can shelter themselves from adverse policy determinations and exert a substantial amount of control over local politics. With regard to educational politics in New York City, the United Federation of Teachers (UFT) is such a group. Its leader, Albert Shanker, is such an individual. The "non-decision" of concern here is an amendment to section 3020-a of the State Education Law, which governs the procedures for disciplining and removing incompetent or undesirable teaching personnel.

The United Federation of Teachers did not become the official collective bargaining agent for school teachers in New York until 1961, after a one-day strike to be granted such a right from the City, and years of organizing within the ranks of the work force. It was at that time that the UFT was also granted the dues check-off, a procedure of dues payment through an automatic paycheck deduction. Thereby, New York City became one of the first school systems to recognize the legitimate right of teachers to be represented in collective bargaining. Prior to that time, the salary scale for teachers ranged from $4800 to $9100 in a fourteen-step pay schedule. Class sizes often exceeded fifty students to one teacher. If a teacher wanted health or hospital benefits, the City would pay for only one half of an insurance plan. In fact, there was a dark period in the history of the profession when a woman could be dismissed from duty for becoming married or pregnant. Employee grievance procedures simply did not exist, and abuses of personnel were intolerably common.

As of 1980, the beginning salary for a classroom teacher in New York was $11,821. A senior teacher with 30 credits beyond the M.A. degree could earn up to $25,822. [3] Maximum class sizes are contractually set at between 32 and 34 students, depending upon the level of instruction. [4] New York City school teachers now enjoy one of the most generous health and welfare plans in the nation. The UFT has also been an aggressive and effective force in protecting the rights and working conditions of its members.

Organizing efforts among school personnel in the city date back as far as 1916 when the Teachers Union of New York became Local 5 of the American Federation of Teachers. In 1924, the Joint Committee on Teachers Organizations was formed. This group represented sixty-five separate teacher associations. With the cooperation of other teacher groups and labor unions throughout the state, this group began to concentrate a large measure of its professional and political energies on the state capitol in Albany. The focus of its activity was indicative of the decision making structure in education at the time, since most of the laws and regulations governing the profession emerged either from the state legislature or the Board of Regents. The Republican-dominated legislature in Albany had always been willing to assume a large portion of responsibility with regard to educational policy making, rather than leave discretion at the local level where it would be controlled by city Democrats. The legacy of that legislatively dominated decision structure is still felt today. New York is the only state in which the Board of Regents is appointed by the legislature. Many statutes defining the working conditions and tenure of teachers are still written in the state capitol.

In 1935, the Teachers Guild was organized in New York City by an insurgent group within the local union. The split was brought about in protest to the alleged left-wing ties of the union's leadership. In 1941, the Teachers Union of New York City was expelled from the American Federation of Teachers and the Teachers Guild became the new AFT affiliate. From 1935 to 1959, the Teachers Guild unsuccessfully led a series of efforts to unite the various teacher associations around the city into a single union. By 1960, its successor organization, the UFT, could only claim the membership of 2000 individuals from a total citywide teaching staff of 38,000. Today, the UFT in New York City boasts a membership of more than 77,000. Its ranks include teachers, guidance counselors, paraprofessionals, and school secretaries. The union negotiates eight separate contracts with the Board of Education for its diverse membership. Since 1974, its president, Albert Shanker, has also served as president of the American Federation of Teachers, which enjoys a membership of more than 570,000. It is rivalled on a national scale only by the National Education Association, which claims a membership of nearly 1.75 million. The two national teachers' associations have been known to frequently disagree on professional, policy and political issues.

Albert Shanker has also served as Vice-President of the New York State United Teachers (NYSUT), an AFT statewide affiliate which exercises a significant amount of political clout in Albany. Shanker describes its potential quite blatantly in these terms:

> We are the most powerful political force in the state. NYSUT has over 200,000 members. A recent poll shows that 85% of our members vote for the candidate endorsed by the union leadership. We put (Senator) Moynihan over the hump. We were decisive in Ted Kennedy's winning of the state presidential primary.[5]

Since the granting of collective bargaining rights to the UFT more than twenty years ago, Albert Shanker and his union have also emerged as a major political force at the local level in New York City. Through its VOTE/COPE fund, the UFT maintains a large political war chest, financed by a $10 annual contribution from each of its members, which enables it to openly and actively support candidates in local and state elctions. Borough Presidents, elected in the city on a county-wide basis, are often beholden to the UFT for their success at the polls. The accumulation of such political debts is not inconsequential, since it is the borough presidents who appoint five of the seven members of the central Board of Education. Some observers of the municipal labor scene would also argue that by professionalizing the collective bargaining process with high-powered negotiators, the UFT has placed itself at a significant advantage over those career educators who negotiate on behalf of the City. [6]

Combining the expertise of a professional association and the forcefulness of a large labor organization, the UFT has carved out a central role for itself with regard to educational policy making in the city. The union instituted its first major curriculum proposal within the city school system in 1964, with the development of the More Effective Schools Program. Based upon a deficit model theory of compensatory education, the program was designed to produce those teaching and learning conditions that would allow for quality education in depressed areas. [7] The concept displayed many similarities to the School Improvement Project that would be implemented by Ron Edmonds more than ten years later.

In 1967, the UFT became involved in its first major wage dispute with the City. It led to a three-week strike which virtually closed all the city schools. The job action was only one of several serious strikes which the then Mayor of New York, John Lindsay, would face with an increasingly militant work force. However, it was the first of its kind carried out by the teachers. In the end, the UFT was granted a generous wage increase with a $10 million contractual commitment for the development of new instructional programs. From that point onward, the union has been intimately involved with every major curriculum innovation that has emerged from Livingston Street.

The year after its first major strike, the UFT became involved in what is perhaps the most memorable and explosive political controversy in its history. It occurred in 1968, when the union decided to side with the professional bureaucracy at Livingston Street to oppose Mayor Lindsay's plan for decentralization and community control. The battle grew particularly ugly when a group of predominantly white teachers from the UFT became embroiled in a near-violent debate with a black school board in the Ocean Hill-Brownsville experimental school district. What began as an argument over job security and neighborhood government, ended with an exchange of accusations involving racism and anti-semitism. The school decentralization debate was a major contributing factor to the racial polarization that plagued the city in 1968. It drove a wedge of disagreement and mistrust between the UFT and the black and Puerto Rican community. Shanker's behavior during the episode was seen as uncharacteristic by many who knew him as a charter member of the Congress of Racial Equality, and as a man who had marched alongside Martin Luther King to protest racial segregation in the South.

After a state law was enacted in 1968 to implement decentralization citywide, the UFT became an active participant in neighborhood school board elections, using its large membership and bountiful war chest to support its own candidates and tickets. By 1973, 54% of those who were elcted to local school boards in the city were UFT candidates. [9] The union spent an estimated $127,000 on election-related activity during that year. [10] Ten years later, the union continues to elect a majority of the local school board members in New York. This experience is demonstrative of a basic fact of political life, which suggests that institutional restructuring does not significantly alter the power structure in a given community, it merely reshapes the arenas in which the truly powerful exercise their influence.

Albert Shanker began to rebuild bridges to the black and Puerto Rican community in 1969 when he extended union membership and protection to 9000 paraprofessionals (para's) who had come to work for the school system in 1966 and 1967. Most of these para's were black or Puerto Rican women. Many were former welfare recipients. A good number were high school dropouts. They were hired with the support of federal Title I monies to assist classroom teachers in providing small-group remedial instruction to educationally disadvantaged students. All para's are required to complete high school in order to retain their jobs. When they voted in 1969 to accept Shanker's invitation to join the UFT, the union negotiated a contract that carried a sizable package of new benefits. Among these was a part-time education at the City University throughout the school year and during the summers. The purpose was to erect a career ladder so that many of these workers would eventually join the teaching force. The union has billed the program as "an affirmative action program that works." The program has been well received in the minority community. In 1970, Shanker ingratiated the minority community once again when he vigorously supported the paras' pleas for wage increases. After Shanker threatened to initiate a citywide teachers' strike if the demands of the paras were not met, the union persuaded the Board of Education to agree to wage increases which were in excess of one hundred percent.[11]

Shanker's militant posture on the para's has certainly worked to change the course of events between him and the minority community. Throughout the next several years, the relationship between the UFT and the city's black and Puerto Rican population would move with slow but steady progress. However, there were occassional setbacks. Shanker, for example, has gone on record, quite unambiguously, as a staunch opponent of hiring quotas. This has not set very well with many leaders of the minority community in the city, not to mention white civil rights advocates. The quota issue became a particularly sensitive one with the onset of the city financial crisis in 1975, and the attendant layoff of thousands of teachers along with other municipal workers. Since black and Puerto Ricans are often the last hired among city employees, they have been disproportionately the first fired, undercutting efforts designed to increase minority representation and employment. However, Shanker has stuck to his position on the quota issue and remains an adamant defender of the seniority rule.

The fiscal crisis that struck New York in 1975 significantly changed the stakes of local politics. The union, once preoccupied with having a major say regarding how the education budget would be spent, has become increasingly concerned with the measure of resources made available for education. Thus, the UFT became a major force behind the Stavisky-Goodman bill, a state law passed in 1976 designed to protect the school system's share of the local tax levy budget. As the clientele of the school system has grown increasingly poor and the dollars available for education decreasingly less, the UFT has emerged as one of the major advocates for public education in the city, and in an indirect way, for the minority community which is the major recipient of public education services. Given the demography of the city and the independent stake that the union has in the stability of the school system, this common interest was perhaps predictable. Less predictable, however, was the way in which the budget situation and the political affairs of the city would shape the relationship between union president Albert Shanker and the new schools Chancellor Frank Macchiarola.

SHANKER AND MACCHIAROLA: AN EMERGING RELATIONSHIP

The relationship between Albert Shanker and Frank Macchiarola would take some time to forge. Shanker had been the most outspoken opponent of Macchiarola's appointment. In fact, he nearly stopped it. However, in some way, the two would have to learn to live with each other. Macchiarola the Chancellor was not Macchiarola the nominee. His support would be needed by the union on some issues. Likewise, Macchiarola would sometimes need Shanker. There were not many strong supporters of public education left in New York, and both men understood that.

Nevertheless, there was much room for debate. Macchiarola represented management. Shanker represented labor. Macchiarola stood for change. Shanker had a certain investment in the status quo. Macchiarola had been the nominee of Edward Koch. Shanker was a militant foe of the Mayor. Macchiarola was bent on achieving more staff accountability. That pledge did not ring well with labor leaders. Shanker often accused the Chancellor of grandstanding. He saw the Administration's attack on correspondence courses for salary credits and the Chancellor's occasional denials of tenure as meaningless gestures in public relations. The UFT president was angered by the Chancellor's six-month report, which he believed was unreasonably harsh on teachers. Yet Macchiarola had a message to communicate. Things would not be the same under his Administration.

There were significant signs of hope. A week before his formal swearing in, Macchiarola had proven that he was capable of being an effective advocate on behalf of the school system budget. His tampering with the original Anker proposal resulted in smaller class sizes in the early grades and a transitional class program for holdovers. Shanker liked that. The Administration's School Improvement Program was very much on line with the UFT's More Effective Schools effort. So there appeared to be encouraging agreement on certain instructional and philosophical issues.

The shaping of a relationship between Albert Shanker and Frank Macchiarola was handled with political mastery from both sides. It would advance on a case-by-case basis, according to the issues. There was little room for ego. Both men were too politically astute for that. They would fight tooth and nail on some matters, but they would recognize the need to work together on others. It was a relationship built upon mutual respect, even though it was occasionally burdened by unkind words.

There was early evidence of a reconciliation. It appeared in the form of a relatively quick agreement on the UFT contract, which Shanker and Macchiarola had negotiated by mid-July, just weeks after the new Chancellor took office. It was the first labor settlement to be reached in the city that year. A tentative agreement had actually been worked out by June 24th. The rank and file of the union ratified the contract by a margin of ten to one. However, as soon as the package was put together by school officials and union representatives, Mayor Koch's budget advisors began to register their disapproval. There was no problem with the four-percent wage increase that had been negotiated. The major bone of contention revolved around the UFT's paraprofessionals, which had now become a cause celebre of Albert Shanker.

When paraprofessionals began working for the school system in 1967, most did so on a part-time basis. They were treated accordingly, without the benefit of any pension rights or paid vacation time. When the school year ended in June, these employees would be laid off. They would collect unemployment benefits for two months, and then be rehired in September. By 1978, most of the 10,000 para's employed by the Board of Education were working on a full-time basis. However, they were still treated as part-timers without the benefits granted to other City employees. Shanker argued that these individuals should be given both pension rights and paid vacations. Macchiarola agreed. A provision to that effect was therefore placed in the original 1978 contract settlement. When Koch's budget advisors voiced disagreement with that idea, the Mayor ordered Macchiarola and Shanker to renegotiate the contract. Both the Chancellor and the UFT president refused to return to the bargaining table.

The original UFT settlement sat on the Mayor's desk for six months while school officials and union negotiators argued with City budget analysts over the costs and affordability of the labor package. Finally, in early January (of 1979), Koch announced that he would not approve the "annualization" of the para's. Koch's budget figures showed that costs of annualization would exceed the limits of the Coalition Economic Agreement arrived at by City officials and municipal labor leaders during the previous summer. He also expressed concern that the annualization of the para's within the school system would set a bad precedent for similar workers in other City agencies.

Since Macchiarola refused to renegotiate the union agreement, Koch decided to sit down with Shanker himself. The UFT president pledged that he would disprove the budget figures prepared for Koch by the Deputy Mayor and the Office of Management and Budget. When Macchiarola was informed that a meeting had been set for the eighth of January, he remarked that he was rooting for Shanker.[12] When the meeting finally took place, it resulted with the Mayor's rejection of the para settlement for a second time. At that point, the matter was put up for arbitration.

The dispute over the para's received considerable attention in the local media. Beyond the significance of its economic implications, it was treated by some as much more than a collective bargaining issue. A notable editorial appeared in the Amsterdam News which began,

> We agree with the United Federation of Teachers just about as often as we agree with Mayor Koch, which is to say rarely. But in the current dispute between the UFT and the Mayor, the union is right - and the Mayor is in the wrong.[13]

The editorial concluded with the argument,

> Para's represent a group of minority people, many formerly on welfare, pulling themselves up by hard work into the working and middle classes. They should be encouraged. It's good for them, good for our schools and our kids...and most of all, good for the future health of our city.[14]

The final outcome of the arbitration concerning the annualization of para's was a compromise. The arbitrators found that there was more money available for the para's than city budget officials had claimed, but less than the union had negotiated for. Thus, it was decided that the para's would be granted some of the vacation pay that was requested for them; however, they were not admitted into the City pension system. While the final gains achieved by the para's were modest in comparison to what had been hoped for, the unfolding of the issue represented an important step forward in their efforts to receive recognition as a coequal segment of the City work force. Shanker had been fighting for annualization for eight years. This was the most sympathetic hearing he had ever gotten from an Administration at Livingston Street. The events surrounding the para dispute also demonstrated that UFT president Albert Shanker and schools Chancellor Frank Macchiarola could work together as allies, despite all the "bad blood" that had passed previously.

Of course the labor contract told only part of the story. A more comprehensive analysis of the Chancellor's first year in office would show that alliances between Livingston Street and the UFT were at best tenuous. They could not survive exposure to a more general assortment of policy issues. At the same time that Shanker and Macchiarola had joined forces to advocate on behalf of school system employees, they were functioning as adversaries with regard to another policy question. The second issue also involved school employees. It again included the Mayor. But this time, Macchiarola and Koch were in full agreement.

Mayoral candidate Edward Koch had promised that, if elected, he would institute a residency requirement for municipal workers in New York City. He postulated that such a law would stabilize city neighborhoods, assure more positive attitudes among city employees, and allow individuals on the municipal payroll to contribute to the economic vitality of the city. Board of Education nominee Frank Macchiarola supported the Koch proposal wholeheartedly. In fact, as president of Community School Board 22 in Brooklyn, Macchiarola had established a city residency requirement for all employees of the local school district. As Chancellor, Macchiarola had stipulated city residency as a prerequisite for all individuals hired to join his personal staff and for all executive personnel at Livingston Street who served at his pleasure.

In 1978, approximately 16% of all municipal workers in New York lived outside of the city. The proportion was larger among higher paid workers. Approximately 40% of the city policemen, and 50% of the city firemen did not reside within the five boroughs. Among teachers, out-of-city residence is approximately 20%. There was nothing unique or unusual about the Koch proposal to pass a residency law for New York. Neighboring Nassau County had imposed such a requirement for all of its municipal employees except for police personnel and community college faculty. Similar requirements exist in Chicago, Newark, Washington, Houston, Detroit, Los Angeles, and Philadelphia. A test case before the United States Supreme Court upheld the constitutionality of the Philadelphia law in 1975. [15]

New York City had once passed its own residency law for municipal workers in 1937. The purpose of the so-called Lyons law, named after its sponsor, was to alleviate the scarcity of jobs that were available for city residents during the depression. Enforcement of the law eventually began to waiver over the years, and in 1962, Mayor Robert Wagner repealed it in order to broaden the pool of qualified applicants that would be recruited for City service. Notwithstanding the historical and legal precedents, Koch's proposal for a new law was unanimously opposed by the City's labor unions. There was concern among union members that employees living in suburban areas near the city would be forced to relocate. There were objections to the fact that workers residing in the city would have restrictions placed upon their geographical mobility. Some argued that a new requirement would limit the capability of the City to recruit the most qualified personnel.

Despite the protestations of labor leaders, Koch's proposal was passed by the City Council on July 11, 1978. It was adopted by a margin of 32 to 3. According to the new law, all individuals placed on the City payroll after November 1, 1978, would be required to live in the city. Employees living within the city prior to that date would be forbidden to move out. In reality, the final bill submitted to the Council by the Mayor was a compromise from his original proposal. The initial bill would have been retroactive, thereby forcing all individuals living outside the city prior to its passage to move back.

The enactment of the new law immediately gave rise to several significant legal issues. Attorneys for the United Federation of Teachers and the Professional Staff Congress, which represents faculty at the City University, questioned whether the law passed by the City Council could govern personnel within the Boards of Education and Higher Education, since both were independent agencies under state law. In September, the two groups initiated a law suit in the state courts which contested the jurisdiction of the law. Shortly thereafter, the Patrolmen's Benevolent Association (PBA) and the Uniformed Firefighters' Association (UFA) launched their own legal challenge to the law, questioning the authority of the City Council to institue a residency requirement for municipal workers without prior enabling legislation by the state legislature.

While the merits of the Mayor's law were being debated in the state courts, Chancellor Macchiarola was in the process of taking his own action to assure that the intent of the statute would be preserved within the school system. Macchiarola proposed that the Board of Education should enact its own residency requirement. The idea was vehemently opposed by Albert Shanker. Shanker personally appeared at the Board of Education hearings held on the subject in mid-October to announce his disapproval. The ensuing public debate represented the first major confrontation between the union president and the Chancellor since the latter's appointment. Shanker was joined in his battle by Ted Elsberg of the Congress of Supervisory Associations (CSA). After much discussion at Livingston Street, Macchiarola's proposed regulation was approved by the Board of Education by a margin of 4 to 3.

The Board of Education resolution adopted on October 18th included three major provisions:

1. As of November 1st, all teachers and school personnel living within the city would be prohibited from moving out.

2. As of November 1st, no person living outside the city could be hired, unless he or she assumed city residency within five months after hiring.

3. Any nonresident promoted to the position of elementary school principal or above after November 1st, or who receives a salary of $29,500 or more under the Board of Education executive pay plan, must establish city residency.

The inclusion of the third provision of the Board resolution, concerning strict standards of eligibility for promotion or appointment to executive-level positions, amounted to the establishment of a more rigorous residency standard for school personnel than the one set by the City Council for municipal employees. On the day after the Board voted on the Chancellor's proposal, Supreme Court Justice Sidney Asch handed down a ruling concerning the legality of the City Council statute, as it was challenged by the police and fire unions. While Justice Asch did not question the authority of the City Council to make such a law, he found fault in the manner in which the law was written and enacted. Thus, in a twenty-three page decision, he declared,

> ...it may be legally possible to require plaintiffs to live in New York City, but not without the authorization of the New York State legislature and better legislative draftsmanship.[16]

Mayor Koch responded to the Asch decision with a pledge to appeal the ruling to a higher court. However, shortly thereafter, the Civil Service Committee of the City Council passed a resolution to delay implementation of the residency law until its validity was upheld in court. In the meantime, the Board of Education resolution was still standing. Therefore, if matters proceeded according to plan, school system employees would be the only workers in the city affected by a residency requirement on the first of November. This made Albert Shanker and CSA president Ted Elsberg more adamant about taking preventative action against the Board's measure. Given the similarity which existed between the Council statute and the Board of Education regulation, the Asch decision certainly strengthened their legal hand.

On November 2nd, attorneys from the CSA obtained a one-week stay from State Supreme Court Justice Burton Roberts, which delayed the implementation of the Board's residency requirement. This stay was later extended by Justice Edward Greenfield until November 17th, at which time school attorneys were to respond to a joint suit initiated by the CSA and the UFT. As it became apparent that a long legal battle was in the offing, the Board of Education voted on its own to postpone enforcement of its residency requirement until the legal issues were finally settled.

In July of 1979, the Appellate Division of the State Supreme Court upheld the decision that had been handed down by Justice Asch nine months earlier. [17] In April of 1980, a unanimous State Court of Appeals once again affirmed the lower court rulings, declaring the local statute enacted in July of 1978 illegal. [18] At that point, Mayor Koch promised that he would begin a new effort to have a law passed by the state legislature. Given the power that the municipal unions wield in Albany, most astute observers agreed that the prospects for such action were not very good. The handwriting was on the wall. The residency issue was dead in New York. At Livingston Street, the Board of Education, which had only approved the Chancellor's original resolution by one vote when the controversy began, never took action to allow for its implementation.

Frank Macchiarola lost his first major battle with Al Shanker. Nevertheless, the differences between the two leaders never became personal. There was still much room for cooperation. As the events described in a previous chapter demonstrate, the UFT turned out as a major supporter of the Chancellor's Promotional Policy. Indeed, it can be said that the union played a key role in the policy design. As seen in another chapter, Macchiarola and Shanker would usually join forces at least once each year in order to defend their common ground on the education budget. In 1978, the UFT and the new school Administration became involved in a large cooperative venture to operate the New York City Teachers' Center. Begun in 1977 with support from a federal grant, the Teachers' Center represents one of the most ambitious voluntary efforts at in-service training ever to have been launched. It is one to which the union has turned with special pride. When the Reagan Administration eliminated funding for the project in 1981, the Chancellor took measures to continue its existence through the use of public funds. The move signified a far-reaching exchange of good will between the UFT and Livingston Street.

But problems would continue to exist. The relationship between the union and the Administration was enormously complex. There had to be differences which were indigenous to the varying roles each played within the structure of the school system. There was the basic labor-management dichotomy which would occasionally appear. So there would be more battles. Among the most intense were those related to section 3020-a of the State Education Law.

3020-a: AN ACT OF THE LEGISLATURE

Section 3020-a of the State Education Law was enacted in 1971. Its purpose was to establish hearing procedures for tenured teachers charged with unsatisfactory performance or behavior. Under 3020-a, a tenured teacher found guilty of charges could be either disciplined or permanently removed. However, no such action could be taken against the accused until certain specified due process guarantees were made available. According to 3020-a, a teacher brought up on charges by a local school board was entitled to a hearing by a tripartite panel. The membership of the panel would be chosen from among a list of individuals maintained by the State Commissioner of Education. One member of the panel would be selected by the school board making the charges, another member would be selected by the accused, and the third would be selected by the mutual consent of both sides. A fourth person, who would serve as a hearing officer, was appointed by the Commissioner of Education. The latter would be an employee of the State Education Department.

The findings and decisions of a 3020-a panel would not be binding. The local school board making the charges would maintain the right to either reverse the findings, or alter any penalties recommended by the panel. This reserved power of the school board was consistent with standard practices in municipal law, which grant final discretion regarding employee discipline to the employing agency. Section 3020-a does guarantee that an individual brought up on charges would be entitled to receive pay until a final disposition of the case is made. This would be true even if the accused person were suspended from duty pending a hearing. The latter practice is not consistent with general practices in municipal law, which allow employer agencies to suspend an individual brought up on charges without pay.

In 1976, the New York State United Teachers (NYSUT) launched a legislative campaign designed to alter the provisions of section 3020-a. A particular target of NYSUT's efforts was the legal stipulation that an accusing school board exercised final discretion regarding the outcome of disciplinary hearings. Understandably, union officials believed that the local school board had a built-in bias against a teacher brought up on charges. Data released by NYSUT claimed that school boards ignored nearly 70% of the advisory rulings arrived at by hearing panels.[19] While the procedures in place would allow a teacher to appeal a school board decision to the State Commissioner or the courts, such action was external to the hearing process. Taking an appeal through the courts involved expensive legal fees, and union officials were of the opinion that the State Commissioner had a tendency to side with the local school boards in such appeals. On the latter point, another provision of 3020-a with which the union took exception was that which prescribed that panel members must be chosen from a list provided by the Commissioner of Education. NYSUT also objected to the procedure whereby the Commissioner would appoint a state employee to serve as a hearing officer.

The major opponent of NYSUT's attempt to amend the State Education Law was the New York State School Boards Association. The association, which represents school boards from around the entire state, saw the union's legislative campaign as an assault upon the sovereignty of the local school district. The school boards launched a valient lobbying campaign in Albany. But they proved to be no match to the power of the statewide union or Albert Shanker, who had become directly involved in the legislative maneuvering. The Senate passed the union-backed bill by a margin of 47 to 7. While matters moved a bit more slowly in the Assembly, the bill, under the sponsorship of Education Committee chairman Leonard Stavisky, was eventually approved in the second house. Governor Hugh Carey signed the bill into law in 1977, claiming, "I'm about to sign the NYSUT bill, because I'm for fair play."[20]

Chapter 82 of section 3020-a amended the State Education Law in several significant ways. To begin with, under the new provisions, a local school board no longer had authority to overrule a finding or recommendation of a hearing panel. Therefore, the school board lost its capability to exercise unilateral discretion in a case. Union leaders hailed this amendment as the most far-reaching innovation of the law. As Don Sanders, Vice-President of NYSUT, explained,

> The important aspect of the bill is that it makes binding the decisions of the hearing panels...The hearing panel decisions are at present advisory under the Education Law. As the years have passed since the law's adoption, these panel decisions have been more and more ignored by school boards...[21]

A second alteration resulting from the new law concerned the selection of hearing panel members. As before, the hearing panel would be composed of three members - one selected by each of the parties, a third by mutual consent. However, rather than being selected from a list of eligibles prepared by the State Commissioner, the third member would be chosen from a list of professional arbitrators provided by the American Arbitration Association. This third member would chair the panel and also serve as the hearing officer. The hearing officer previously appointed by the State Commissioner would be eliminated. Thus, while the final appeals could still be taken to the State Commissioner (or the courts), the role of the Commissioner within the hearing process was greatly reduced.

The American Arbitration Association (AAA) is a private, non-profit organization which maintains panels of arbitrators in various fields of expertise. Its dues-paying membership includes unions, private companies, trade associations, and arbitration panel members. Labor panels put together by the AAA consist of private individuals who are found acceptable by both employers and unions. An arbitrator's acceptability must be demonstrated by letters of endorsement solicited from each side of a dispute. Once an arbitrator is deemed acceptable, his or her qualifications are further reviewed by the AAA. For a fee, the AAA will send parties to a labor dispute or grievance a list of names of proposed arbitrators it has found to be qualified. In cases involving 3020-a procedures, the costs of AAA-endorsed arbitrators are paid by the State Department of Education at a fixed per diem rate.

The mandated use of AAA-referred arbitrators under state law has been a source of much criticism from school board attorneys. They contend that because of the regular business association between the union and AAA arbitrators, it is difficult for the latter to be objective. Some critics would go so far as to suggest a conflict of interest. One attorney from the New York City school system explains,

> The problem is that the UFT does business with the AAA on a regular basis. It has the power to blacklist AAA people if it wants.
>
> The union has a computerized record of each arbitrator. It will not use those who have been tough. The arbitrators are sensitive to that. It is their livelihood.[22]

There also appeared to be administrative problems relevant to the provisions of 3020-a, which made the hearing process both cumbersome and costly. A study prepared by the State School Boards Association for the 1977-1978 school year, showed that the average length of time which elapsed between the formal statement of charges against an employee and a panel decision was 36.5 weeks.[23] The same study showed that the average cost per hearing - including legal fees, staff salaries, and the salary paid to suspended teachers - was approximately $27,000.

Once the 1977 amendment to section 3020-a was written into law, the School Boards Association, its major opponent, turned its strategic efforts toward litigation. In the latter part of 1977, attorneys from the Association acting on behalf of the Belmont school district in Allegheny County brought a suit into state court which challenged the constitutionality of the law. They argued that 3020-a unconstitutionally delegates state legislative powers to a private party and violates procedural due process. The matter was transferred from the State Supreme Court in Allegany County to the Appellate Division Court on March 28, 1978. On November 10, 1978, the Appellate Division unanimously upheld the constitutionality of 3020-a.

On March 24, 1980, Harvey Mandelkern, Deputy Counsel for the State School Boards Association, brought the case into the State Court of Appeals, New York's highest court. In addition to the constitutional issues that had been raised previously, the Association attorney raised a question as to whether 3020-a represented a "private law." Specifically, he argued that the existing statute granted an exclusive privilege and franchise to the AAA. One month later, the Court handed down a unanimous decision, again upholding the constitutionality of 3020-a. It found:

> ...we perceive no constitutional bar to the legislative designation of the association as a nominating body, who can reasonably be expected to present the Commissioner, on an objective basis, the names of individuals exceptionally qualified by prior service..." [24]

There would be other litigation surrounding the provisions of 3020-a, and it would be initiated from both sides of the dispute. The union, for example, challenged the authority of the State Commissioner, who, on appeal from a local school board, raised the penalties imposed upon a teacher by a review panel. The Commissioner's authority was upheld on that point by the State Appellate Division. [25] On another occasion, the Court of Appeals upheld the right of a suspended teacher to collect his salary pending the determination of a 3020-a hearing. The Court ruled that while it would not necessarily be an infringement of one's constitutional rights to impose suspension without pay, section 3020-a, "as now worded," does not authorize it. [26]

From a litigator's point of view, it was growing increasingly apparent that section 3020-a, in the form that it evolved during 1977, was invulnerable. There was only one way to challenge the provisions of the State Education Law in its present design. That was to take the issue back to the legislature and to rewrite the law. However, given the prior experience in that arena, and the superior power of the union, the likelihood of a legislative victory was not very high. Other than the State School Boards Association, there did not seem to be any broad constituency that would support legislative reform. Nobody wanted to touch the issue. It seemed like a lost cause.

A statement by CSA president Ted Elsberg, who represents those school principals who are often most victimized and frustrated by the cumbersome 3020-a procedures, is very telling. He remarks,

> There are problems in dealing with certain incompetent teachers. However, there is a labor issue involved as well concerning the rights of employees. I know that the law is sometimes frustrating to supervisors, but we are not advocating any change in it. The union has won it, and we have learned to deal with it.[27]

Philip Kaplan, president of the New York City Community School Boards Association, articulates a similarly revealing sense of resignation with regard to 3020-a. He states,

> 3020-a regulations won't be changed because the union wants it the way it is. Shanker has flexed his muscle. He is too strong. We have to learn to live with it. Principals and supervisors must be taught to deal with it.[28]

Subsequent to the 1977 victory by the union, 3020-a fell into that category of "non-decisions" that would not be seriously considered for some time. Its revision would never again be formally discussed in a legislative committee. Even the State Commissioner of Education, whose original authority was compromised by the 1977 amendment, shied away from the issue. The New York City Board of Education, understandably reluctant to take on Albert Shanker and his union, would also refuse to give it purposeful attention. The issue appeared to be dead.

TEACHING AS A PROFESSION: A RELEVANT QUESTION

In November of 1979, State Commissioner of Education Gordon Ambach submitted to the Board of Regents a detailed set of recommendations on "Teaching as a Profession and Teacher Competence." These recommendations were designed to provide a "comprehensive system for recognition of teaching as a profession, the licensing of teachers and supervisors, and the enhancement of teacher competence."[29] Prior to that time, teachers in New York received state certification essentially through the fulfillment of a prescribed course of study at the college and university level.[30] Central to the proposals within the new Ambach plan was the creation of a statewide competency test for the licensing of teachers. The proposal included a prescribed one-year internship for new personnel, and called for an allocation of state funds to support in-service training for teachers, supervisors, and administrators. If adopted, the Commissioner's plan would also require each local school district to develop a comprehensive system for the periodic review of all teachers, supervisors, and administrators.

The proposal presented to the Board of Regents was conceived as an appropriate complement to the developing statewide approach to competency testing for students. A major goal behind the comprehensive plan was to provide statutory recognition of teaching as a profession so as to move closer to the concept of self-regulation that currently exists within other professions, i.e., medicine or law. Thus, legislation would be proposed for the establishment of two state Boards, a Board of Teachers, and a Board of Administrators. These Boards would operate under the aegis of the Regents and the State Education Department in a manner similar but not identical to other professional Boards in the state. State responsibility for the disciplining of teachers, which was currently provided through the Regents' rules and Commissioner's Regulations, would be established by statute, and transferred to the two State Boards.

By the end of 1979, the Regents of New York had been considering and discussing ideas to raise teacher competency for more than five years. In 1977, a state task force studying the issue recommended the creation of a seventeen-member Board. It would be composed of seven teachers, three school administrators, two university faculty, two university administrators, one guidance counselor or psychologist, and two representatives of the public. Initially, the task force recommendation received the support of both the United Federation of Teachers and the New York State United Teachers. However, over the next two years, effective lobbying from other members of the educational community led to the plan to create two Boards. The latter plan was opposed by the teachers' unions. Part of their disapproval flows from the fact that the two Boards proposed would have no formal decision making power, but would only serve in an advisory role to the Regents. Labor leaders also object to a provision in the Commissioner's plan which would enable the state to revoke a teacher's license for participation in a strike which violates the State Taylor Law.

The Regents had been scheduled to discuss the Commissioner's proposal in early December. Subsequent to that, public hearings on the matter were scheduled for the next several months at various locations around the state. While Regents approval was expected, the passage of enabling legislation through the state legislature appeared to be much more problematic. Difficulties in the capitol were expected because of the criticism that the proposal had attracted from various influential sectors of the education community.

When the Commissioner's plan arrived at Livingston Street in early January (1980), it was not received with particular favor by either the Chancellor or his staff.[31] Macchiarola was not receptive to an idea that endorsed self-regulation of the teaching profession. To him, control of a State Board by the teachers meant control by the union. There needed to be, in his opinion, a stronger consumer role. The analogy between teaching and the other professions did not set well with the Chancellor, since education is a compulsory service. Moreover, nobody was enamored by either the quality or results of self-regulation that were evident in the other professions.

While the Chancellor was reviewing the Commissioner's proposal, a letter was placed on his desk that had been written him by the principal of P.S. 238 in Brooklyn. The woman expressed a basic sympathy with the Chancellor's efforts to improve the quality of public education in the city. But she expressed a deep concern with the quality of some of the teaching staff and the problems inherent in trying to remove those individuals found to be incompetent. She explained,

> Everyone in the field knows that no teacher, however poor a teacher, or destructive of children he is, or unwilling to maintain professional and educational standards, is ever discharged for incompetence...The process of discharge is stacked against the school system, and has no relation to the "due process" it claims to protect.[32]

The principal then conveyed a sense of frustration that grew out of the administrative procedures required by section 3020-a. It was a feeling quite common among her colleagues in schools around the city. She wrote,

> Principals have to neglect many of their other supervisory duties in order to "build a case," only to lose the case because of a legal or administrative technicality. [33]

There was a logical connection between the issues. A comprehensive assessment of the teaching profession, its development and monitoring could not be advanced without a reconsideration of the questions that were generated by the 3020-a debate. Perhaps, political realities forbade a head-on confrontation with the 1977 revisions of the State Education Law. However, teacher discipline could be discussed within the context of the Commissioner's broader proposal. Section 3020-a could be brought back into the educational policy arena, even if it entered through a side door. The law had been problematic for Macchiarola. It was anathema to the accountability theme that was so central to the philosophy of his Administration. Now was the time for a new discussion.

On Sunday, February 3rd, Macchiarola appeared as a guest on the CBS-TV program Newsmakers. As expected, he was asked to comment on the pending proposal for "Teaching as a Profession." The Chancellor proclaimed that while he thought the issue of having qualified teachers in the classroom is an important one, he was not sure that a testing program is the best way to address it. He argued instead for an effective system of tenure review. Calling the existing procedures "hidebound," he complained, "The present system does not have adequate means for us to eliminate a teacher."[34]

Macchiarola began to incorporate the theme of accountability into the speeches he was making to various audiences around the city. The Chancellor made public data which showed that the school system was paying $2 million per year to maintain teachers on the payroll while they were being processed on charges through state-mandated 3020-a hearings. He brought notice to a situation where a city teacher who had been convicted on drug smuggling was kept on the school payroll for thirteen months awaiting the outcome of a 3020-a hearing. On another occasion, Macchiarola publically applauded State Commissioner Gordon Ambach for raising the penalties imposed by a 3020-a panel on a teacher who had been found guilty of showing a pornographic film to his high school class.

Macchiarola was being very effective. His message was getting out. On February 5th, the Daily News ran an editorial entitled "Paying Rotton Teachers" blaming Albert Shanker for ramming through Albany a law which made it difficult to fire incompetent teachers.[35] On March 17th and 18th, WCBS-Radio aired a similar editorial on "Disciplining Teachers," condemning the bureaucratic obstacles created by the 1977 provisions of the State Education Law.[36] On April 4th, as the Regents were about to hold hearings on the State Commissioner's pending proposal, the New York Times ran an editorial tying the latter issue to the question of teacher discipline. Entitled, "What Makes a Teacher a Pro?" the editorial noted that the current state laws "virtually prevent" the removal of undesirable teachers.[37] After bringing attention to the strong hold that the teachers' lobby has on the state legislature, the editorial pointed out that the Regents plan would "hold teachers to no stricter account than before."

Macchiarola appeared before the Regents' hearings on April 9th, fully intent on forcing the State Board to consider the Commissioner's proposal within the context of the 3020-a issue. The Chancellor opened his statement by praising the new plan for "focusing our critical judgment on where we are and where we should go." But in the same breath he noted, "I must quickly add that the draft is lacking in some significant respects." [38] In customary fashion, he sounded the call for "greater accountability among our professionals," and offered regrets that "the proposals will make accountability more difficult than ever." The Chancellor admitted particular disappointment that "the proposals do not address the problems created by Section 3020-a of the State Education Law." He then presented to the Regents data prepared by the Office of Legal Services at Livingston Street, believed to be demonstrative of the problems he had hoped to highlight.

From the period beginning on July 1, 1978 until March 31, 1980, the Administration had initiated disciplinary charges against 57 tenured teachers or administrators. As of March 31, 1980, only 22 of these cases reached disposition. Of the latter 22 cases, four resulted in retirements or resignations, one person died, two cases were dropped by the Board of Education, two cases resulted in dismissals following an inquest, two were settled, and eleven cases resulted in a decision by the three-member panel. Only two of the latter eleven resulted in the termination of the employee. Macchiarola followed his statistical presentation with some specific examples designed to illustrate the abuses possible under the existing law. [39]

The Chancellor closed his statement demanding that school systems must "have the ability to fairly and expeditiously separate incompetent staff." He urged the Regents to "focus on the real issues." He then announced that he would present to his own Board of Education "proposed amendments to improve 3020-a." [40]

Within three weeks of his testimony, Macchiarola submitted a report to the Board of Education. The report explained in great detail the provisions of Section 3020-a of the Education Law, and the impact that the 1977 amendments had on the disciplinary process. It explained the philosophical connection between student accountability (which the Board had so vigorously supported in the form of competency testing), and staff accountability (which was relevant to the proposals tentatively approved by the Regents). The report cited the cost data that had resulted from the 1979 State School Board Association study, and the New York City data that had been presented in the testimony to the Regents. Additional data showed that the average salary costs paid out for each of the 22 personnel involved in the completed 3020-a hearings between July of 1978 and March of 1980, was $20,000. [41] This figure did not include the cost of replacement personnel which amounted to an average of $14,000 per case. As of March 31st, charges were pending against 36 teachers and administrators, 29 of whom were suspended with pay. According to the report submitted to the Board by the Chancellor, these suspensions were costing the school system over $500,000, or on the average of $5,000 per day. [42] Recent data had shown that it takes approximately six months between a finding of probable cause against a teacher to the time of the first 3020-a hearing. Therefore, the school system generally incurs salary costs of $12,500 per employee charged before the hearing actually begins.[43]

Attached to the report was a copy of the letter that the Chancellor had received from the principal of P.S. 238. Also attached was a set of legislative proposals which the Chancellor was urging the Board of Education to endorse and submit in Albany at the next legislative session. These included the following major revisions of the State Education Law:

- Require that hearing panels in 3020-a proceedings related to New York City personnel be composed of New York City residents or permit the use of a single arbitrator rather than a three-person panel.
- Reserve the Board of Education's right to suspend pedagogues without pay for 30 days or longer, if procedural delays initiated in bad faith are the fault of the employee.
- Provide a time frame within which a disciplinary proceeding must occur.
- Permit the filing of charges against a tenured teacher during the entire calendar year and not just the school year as the current law stipulates.

The Chancellor's recommendations to the Board also outlined a list of regulatory procedures that the State Commissioner should be urged to adopt in order to expedite the 3020-a hearing process. Since the latter only involved administrative reforms under the jurisdiction of the Commissioner of Education, they would not require legislative action.

As might be expected, Macchiarola's legislative agenda was not received with great enthusiasm on the part of the Board members. To begin with, there were real differences of opinion on the issues. Some civil libertarians in the city had argued that time and cost were not suitable criteria by which to judge a due process procedure. In fact, one might argue that expeditiousness is counterproductive to the principle of due process. There were also political considerations on the minds of the Board members. All knew that getting a legislative package of this sort through Albany meant doing battle with the union. Several members frankly did not want to take on such a political encounter. The chances for success were not very encouraging. While the Chancellor had managed to bring some attention to the issue in recent months, there did not exist the kind of public mandate needed to overcome the power of the union lobby.

A PUBLIC DEBATE: PORNOGRAPHY AND PENSIONS

On December 13, 1979, Ronald Drew, a New York City public school teacher, was arrested in his home and charged with promoting the obscene sexual performance of children. Confiscated as criminal evidence were more than nine hundred slides and twenty black and white photographs depicting young boys in various explicit sexual poses. In all, approximately fifteen to twenty different children and three adults had been used as models. At the time of his arrest, Drew was assigned to Junior High School 218 in Flushing, Queens, which is located in Community School District 25. The 45-year-old teacher had been a veteran of the public shcool system for nineteen years.

Immediately after an account of the arrest appeared in the local press, Community Superintendent Joan Kenny removed the teacher from his teaching assignment. She then called the Chancellor to request his help in arranging for a nonteaching assignment outside the district. Under ordinary circumstances, a teacher who had been arrested would be transferred to a nonteaching assignment in the district office until the case is fully adjudicated. However, since the district office in Community School District 25 is located in a school building, Kenny wanted the accused teacher out of the district. Macchiarola responded by having Drew placed in a central administrative office in Long Island City.

Drew was indicted by a grand jury on April 7, 1980. Immediately thereafter, while awaiting trial, he began processing papers requesting retirement from the school system at the end of the school year. When Macchiarola had first learned of Drew's arrest, his attorneys advised the local school board not to take any administrative actions against the accused teacher until the criminal case was resolved. This was normal procedure. The Chancellor, however, had never been pleased with the idea of paying someone a salary while he sat idly in a central office. When Macchiarola was informed that Drew was seeking retirement, he instructed the local school board to begin disciplinary proceedings. Under established administrative procedures, a teacher is required to give thirty days notice before action can be taken to process an application for retirement. The Chancellor, annoyed with the prospect of Drew's collecting a Board of Education pension, wanted to see the teacher fired within thirty days, hoping to deny his eligibility for retirement.

Community School Board 25 agreed to consider the evidence against Drew, but it did not appoint a 3020-a panel, nor did it move with the kind of speed that Macchiarola had wanted. On Friday, April 18th, the Chancellor had a letter hand delivered to the school board which carried the following message:

> As you know, during the last week, we have been in regular communication over the question of whether your Board and Superintendent will meet your responsibilities to take action concerning a teacher employed by your district, who has recently been indicted for grave offenses involving children.
> ...it has come to my attention that your Board and Community Superintendent have been, and are, unwilling to take the immediate action necessary to pursue this matter. [44]

The Chancellor's letter ended with an ultimatum for the Board to take "all necessary actions to discharge your responsibilities in this matter" by noon on Saturday, April 19th. Community School Board President Arlene Fleishman responded that it would be impossible to meet the twenty-four hour deadline because Friday evening, in the Jewish religion, "is the Sabbath and we have board members who observe the Sabbath." [45]

On Saturday afternoon, with no action taken on the matter, Macchiarola informed Fleishman that he was suspending the school board. He appointed three of his own staff members to serve as trustees in the district, thereby replacing the school board. He appointed Joseph Saccente, his special assistant, to serve as district administrator. On Sunday, Saccente presented charges to the trustees, and the trustees voted to suspend Drew pending the outcome of a disciplinary hearing. Under the provisions of 3020-a, Drew would be suspended with pay until a final determination with regard to the disciplinary proceedings was made by a three-person panel chaired by an AAA arbitrator.

On Monday morning, Macchiarola obtained a stay from State Supreme Court Justice William Thompson, delaying the Teachers' Retirement Board from processing Drew's application. The Teachers' Retirement Board is a seven-person body which must review all applications for retirement and pension benefits in order to determine an individual's eligibility. The Board is composed of the President of the Board of Education, two appointees of the Mayor, one appointee of the City Comptroller, and three teachers. Fearful that the proceedings of the 3020-a panel would exceed thirty days, the Chancellor had hoped to delay action by the Board, pending an outcome of the disciplinary charges. In the meantime, Macchiarola had gotten Queens District Attorney John Santucci to turn over criminal evidence to the disciplinary panel so that it might be used in the case aginst Drew. The Chancellor also asked State Education Commissioner Gordon Ambach to facilitate and expedite the convening of the panel.

On Monday afternoon, Macchiarola modified his suspension of Community School Board 25, restoring all jurisdiction to the local board except that concerning disciplinary hearings. The latter powers were to remain with the trustees. This modification of the suspension order did not appease the members of the local school board. Within a few days, the board announced that it was employing the services of an attorney to investigate the possibility that the Chancellor had violated the State Decentralizaiton Law. Behind the announcement was an angry threat of a law suit against the Chancellor.

The issues were becoming very clouded. What began as an attempt by the school Administration to call into question procedures governing the disciplining of teachers, was now being expanded into a dialogue over the Chancellor's powers under decentralization. Added to this would be a new debate over pension rights - which was very different from the due process issue that surrounded the 3020-a procedures. Under federal law, pensions in the private sector have always been considered as deferred earnings, to which the employee is entitled. Albert Shanker would argue, on firm legal ground, that the same holds true with regard to public sector pensions. He would also promise to challenge Macchiarola's actions in court.

The public discourse that emerged among the Chancellor, the local school board, and the union, gave rise to a considerable amount of editorial commentary in the local press. But there was little agreement about the merits of the various issues, their relationship, or the order of their significance.

On April 22nd, a Daily News editorial, entitled "Loophole in the Law," commented,

> Board (25) members feel that they have been treated high-handedly. But that hardly seems the issue. The major question is how a teacher accused of such a crime...could be allowed to stay on the payroll and file for a pension. If officials are so slow to act in such flagrant cases, maybe we need a law mandating suspension on indictment.[46]

A Newsday editorial, published on the next day, disagreed,

> Members of Community School Board 25 are right to raise legal questions about their brief suspension last weekend instead of just letting the matter drop...Suspension, even for such a short time, is an extreme measure...There are certainly more than enough questions about the suspension to warrant a thorough legal review.[47]

A New York Post editorial, appearing on a third day, offered more militant support to the Chancellor. After citing Board of Education data on the costs and time involved in the 3020-a hearing process, it argued,

> Chancellor Macchiarola is actively seeking ways to change legislation by which a three-man panel of lawyers insures that offending teachers are retained for several years - long after their conviction in criminal courts - until a disciplinary hearing can make a further judgment.

> Macchiarola should be given the fullest support in his effort...Our legislators should be asked in the coming election whether they are on the side of the teacher's lobby or our children. [48]

As the editorial boards of the city newspapers were airing their positions in public, the Board of Regents was holding its final round of hearings on the State Commissioner's proposals regarding "Teaching as a Profession." Having tentatively endorsed the Commissioner's recommendations, it was only a matter of time before the Regents would finally approve a redrafted version of the Ambach plan. This plan, however, would not include any measures to amend Section 3020-a of the State Education Law.

On April 23rd, Supreme Court Justice Gerald Held extended for two additional weeks a stay preventing the Teachers' Retirement Board from processing the application of Ronald Drew. This two-week stay, returnable on May 7th, would give the Chancellor the time that was needed to begin the disciplinary proceedings against the indicted teacher. A three-member 3020-a panel began its hearings on the first day of May. At this point, Shanker was bringing the whole series of proceedings into question. He called the Chancellor's actions a "railroading." He complained, "There are all kinds of things which are supposed to protect due process - you are getting the equivalent of a posse." [49]

On another occasion, Shanker accused Macchiarola of using the Drew case for his own political purposes. He charged,

> Macchiarola must feel he can't lose this one. If he wins the case, he's a hero in public. And if he doesn't, he will use it as another argument in the campaign he and his counsel have waged for months to get the procedure for dismissing tenured teachers changed. [50]

Shanker continued to deal with controversy over Ronald Drew as a civil rights issue - apart from the severity of the charges made against the indicted teacher. However, his sense of the political implications growing out of the case was very much on target. He had argued his position on Drew at great personal and political cost. Shanker himself had been on the receiving end of severe criticism in the press for defending a teacher accused of promoting child pornography.[51] There was not a good deal of public sympathy on his side. In the meantime, the Drew episode had allowed Macchiarola to lay the issue of teacher discipline before the popular conscience. Ronald Drew more than anyone else helped to develop a political mandate for the reform of Section 3020-a. Drew furnished the kind of support that Macchiarola needed to get the ear of the legislature.

On May 13th, Mayor Edward Koch and City Comptroller Harrison Goldin held a joint press conference to announce that they were instructing their appointees on the Teachers' Retirement Board to take whatever action was necessary to hold the application of Ronald Drew. Together, the Mayor and the Comptroller control the votes of three members of the seven-member body. With the Board of Education President casting the fourth vote, they could dominate a majority of the Board. While the press conference was going on at City Hall, Supreme Court Justice Arthur Hirsch was hearing arguments from the Chancellor's and the union's attorneys concerning the stay which had been in effect on the processing of Drew's application. While the Judge reserved his decision on whether to allow the Teachers' Retirement Board to process the application, he agreed to let the three-member disciplinary panel continue hearing charges against Drew. Under ordinary circumstances, such a hearing would not take place until the accused teacher had been convicted.

After nine days of hearings and nearly 900 pages of transcript, the three-person panel hearing charges against Drew finally reached a decision. On May 15th, it was announced that the panel unanimously found that Drew engaged in "conduct unbecoming" of a teacher, and was therefore unfit to serve in the public schools. The decision read,

> A person who accepts a teaching position, willingly places himself and his conduct in the arena of public attention. What may be acceptable in other walks of life, takes on an entirely different aspect when engaged in by a teacher. A teacher stands in loco parentis. A teacher is a role model for students to emulate. A teacher is a purveyor of community values.[52]

The decision represented a major victory for the Chancellor, who announced, "I am gratified that he (Drew) will never again set foot in one of our classrooms as a teacher."[53]

The controversy was far from ended. Drew's dismissal only served to spur on further criticism by the union. The rapid disposition of the hearing, transpired in only nine days, was seen by the union as a violation of Drew's due process guarantees under state law. The holding of an administrative hearing while a criminal trial was pending was attacked as an infringement upon the defendant's due process rights under the Constitution. And there was still the debate over Drew's pension, which many civil liberties advocates in the press argued was an employee's entitlement, regardless of the circumstances surrounding his dismissal.[54] Appearing on the CBS-TV's Newsmakers program on Sunday, May 18th, Albert Shanker confidently told an interviewer that administrative proceedings against Drew would not stand up in court. He predicted that the entire matter concerning the handling of the dismissal and the pension would be overturned.

Shanker's prediction would prove to be only partially correct. On July 10, 1980, Supreme Court Justice Arthur Hirsch handed down a ruling which held that,

> ...the teacher's application for retirement will be honored and deemed filed and accepted with the New York City Teachers' Retirement Board as of May 7, 1980.[55]

Board of Education attorneys had argued that a thirty-day period must elapse before a teacher could be considered for a pension. The Court disagreed. Judge Hirsch found that applications submitted to the Teachers' Retirement Board were generally regarded by the Board as "self-executing." He therefore deferred to this established administrative interpretation given by "the agency charted with the responsibility of setting the retirement laws into motion."

Judge Hirsch never addressed the broader question of whether a teacher's pension must be treated legally as deferred earnings. It was not really necessary. The decision had the effect of assuring that Drew would receive his benefits. While Macchiarola pledged to take the case to a higher court, a suit never actually materialized. Given the legal precedent set within the private sector, which did treat pensions as deferred earnings, the Chancellor's position did not seem to be based on any firm legal ground. In the meantime, however, Drew's dismissal from the school system as of May would stand, and never be subjected to a serious legal challenge by the union.

It is difficult to assess who, if anyone, was the victor in the Drew controversy. All parties agreed that, if found guilty of a crime, Drew should be removed from his job. Shanker protested the manner in which the disciplinary proceedings were handled, and the attempt to deny

Drew his pension. He won on the latter issue, but at considerable loss to the public credibility of the union - ridiculed by many for defending a child pornographer. Macchiarola managed to have Drew dismissed more quickly than would have been possible if normal administrative proceedings were followed. However, he lost on the pension issue, incurred the wrath of a local school board, and became the target of criticism for his positions on the due process and retirement issues.

In the final analysis, the most significant outcome of the Drew case was political in nature. By making teacher discipline a topic of popular discourse, Macchiarola began to develop a momentum behind his broader effort to revise Section 3020-a of the State Education Law. He had hoped to ride that momentum all the way to Albany.

THE FINAL PUSH

Following a relatively tranquil summer, there was much ado in Albany during the fall of 1980. When the New York State School Boards Association held its annual convention in October, its leadership petitioned the State Commissioner of Education, whose counsel was in attendance, to adopt regulatory reforms that would facilitate the hearing procedures governed by section 3020-a. Strategically, it was understood that changes in those regulations directly under the jurisdiction of the Commissioner were more easily effected than an amendment to the law. Therefore, it was assumed that the Commissioner would be inclined to respond favorably to such an idea. At the same meeting, however, the School Boards Association adopted a resolution to "vigorously support legislation to amend 3020-a," on its own.[56] In particular, the membership had hoped to reinstate the authority of local school boards to fix the penalties for employees convicted of a felony.

The School Boards Association strategists proved to be correct in anticipating a sympathetic response from the Commissioner regarding regulatory reform. What they had not expected was an equally enthusiastic response concerning the legislative agenda they had formulated. Gordon Ambach had become deeply concerned with the rising costs of disciplinary hearings resulting from the 1977 statute - costs that would be assumed by the State Education Department.[57] He had heard numerous complaints from school administrators around the state concerning the cumbersome and time-consuming procedures. He had witnessed the episode of Ronald Drew in New York City. Finally, at the urging of his budget advisor and counsel, Commissioner Ambach began to draft his own proposal for amending the law. This would accompany a new plan for regulatory reform.

In the meantime, on November 20th, the Board of Regents adopted a set of draft regulations pursuant to the Commissioner's recommendations on "Teaching as a Profession." This approval signified the intention of both the Commissioner and the Regents to keep the latter issue separate from the 3020-a debate. However, tentative approval would only serve to necessitate further action - first, in the form of more public hearings to discuss implementation, then in the form of legislation for the appropriation of state funds. The latter prospect would provide cause for more skepticism on the fate of the proposal. The former would provide another forum for those who opposed it.

A hearing was held in late February of 1981. Representing the New York City public schools was the recently appointed Deputy Chancellor for Instruction, Thomas Minter. This was Minter's first public appearance before the Board of Regents. He used the occasion to reiterate the Chancellor's position that the draft regulations "fail to provide a system of true accountability," and "do not address the inadequacies of the existing system for disciplinary procedures." [58] Minter ended his statement by expressing disappointment that the Regents' tentative draft had not included recommendations for amending 3020-a - thereby revealing City school officials were unaware something to that effect was in preparation.

After much deliberation, Ambach's grand scheme for reducing the dilatory and monetary impacts of 3020-a was presented to the Board of Regents on April 22, 1981. To some extent, it was more radical than the legislation which the State School Boards Association had intended to advocate on its own. It was certainly more far-reaching than anything that had ever emerged on the subject from the State Education Department, and more substantial than anyone would have expected. The stated purpose of the Commissioner's proposal was to "make the employee discipline process more expeditious and cost-effective," without "diminishing in any way the protections to which the employee is entitled." [59] It included four legislative amendments.

- The first statutory provision would replace the three-person 3020-a hearing panel with a single hearing officer, who would be a full-time employee of the State Education Department. This, it was hoped, would eliminate some of the scheduling problems inherent in the three-person board, and therefore reduce both the time and the cost of the total process. This provision would also eradicate the role played by the

AAA arbitrator, which was so strongly supported by the union.

- A second statutory provision would require local school boards, when voting charges, to specify beforehand the maximum penalty which will be imposed if there is a finding of guilt. This, it was hoped, would encourage some employees to waive the hearing process, if they learned beforehand that the maximum penalties to be imposed were not severe.

- A third statutory provision would empower the hearing officer to entertain and dispose of pre-hearing motions. This would include motions to dismiss the charges and applications for discovery proceedings outside of the hearing process. It was hoped that such procedures would expedite the hearings through the advance determination of certain kinds of preliminary matters.

- A fourth statutory provision would provide that where a teaching certificate has been revoked by the Commissioner of Education, dismissal proceedings need not be conducted in accord with 3020-a. Such revocations occur when it is found that a teacher does not possess the stipulated qualifications for a certificate.

In addition to the above amendments to the State Education Law, the Commissioner's recommendation also called for several key reforms within his own administrative regulations. These changes would only need the approval of the Board of Regents, and would precede the statutory amendments. These regulatory reforms were also very much in accord with those advocated by the State School Boards Association. They included the following provisions:

- Any motion by an employee regarding sufficiency of charges should be made to the chairman either within 20 days, or 5 days after the selection of the chairman, whichever comes last.

- Employer and employee would be authorized, by agreement, to waive all time provisions of section 3020-a and the Regulations of the Commissioner.

- No panel member would be selected who did not provide a commitment in writing to commence the hearing on the date specified by the Commissioner, and to devote not less than three consecutive days to the hearing.

- Adjournments of a hearing granted by the chairman or hearing officer would be made only in the interest of justice, or upon the showing of good cause.

The Ambach proposals evoked varied reactions from a wide range of interested parties, some of which were anticipated, some not. As may have been expected, the Commissioner received an immediate pledge of support from both the New York State School Boards Association and the New York State School District Administrators. Also somewhat predictable was a letter that Ambach received from the president of NYSUT condemning the proposed statutory charges as "a clear diminution of the protection afforded teachers under tenure," and avowing, "We are unalterably opposed." [60]

City school Chancellor Macchiarola's response to the Commissioner's recommendations was slow, ponderous, and somewhat surprising. It arrived in the form of a three-page letter dated May 20th. The Chancellor's correspondence to the Commissioner began with an announcement of "full support for your efforts to streamline the 3020-a proceeding." However, the body of the letter showed there to be somewhat less than full accord with the details of Ambach's legislative agenda. Macchiarola agreed with the idea of a single hearing officer who was an employee of the State. He supported the fourth statutory provision concerning the revocation of teaching certificates. However, the Chancellor had problems with the recommendation requiring school boards to fix maximum penalties before the outcome of a hearing. This, he believed, robbed a school board of "much of its bargaining position in settlement negotiations." [62] The Chancellor also disapproved of the statutory provision empowering a hearing officer to entertain and dispose of pre-hearing motions. This, he argued, would not allow for full, open, and unlimited discovery within the hearing process. The Chancellor noted support for the Commissioner's regulatory proposals. However, he cautioned that "legislative action remains necessary," and suggested that the new time lines established for hearings be strengthened with the designation of specific sanctions.

On the same day that Macchiarola transmitted his letter to the State Commissioner, he submitted a more detailed memorandum to the City Board of Education. The purpose of the latter document was to outline his own legislative agenda for the repeal of 3020-a in its present form. The Chancellor's legislative package was designed to complement and strengthen the Ambach proposals. It was not meant to be contradictory or debilitative. It was bolder than the set of recommendations that had been submitted to the Board of Education by Macchiarola during the previous year. There was a better chance now that the Board would act on the legislative proposal than there was a year ago. The new plan to "restore to the Board of Education its management prerogatives" included several key provisions.[63]

- Section 2590-j (7) of the State Education Law would be repealed in order to establish uniform disciplinary procedures for all pedagogical personnel with the City school system. Under the existing law, different procedures existed for district and central personnel.

- There would be a rebuttable presumption that conviction for a crime constitutes conduct unbecoming of a teacher.

- There would be time schedules imposed on the hearing process with sanctions attached to any party causing unreasonable delay.

- The tripartite panel would be replaced by a single trial examiner who is an employee of the state.

Two days after the Chancellor launched his legislative campaign against 3020-a, the Board of Regents voted to support the Commissioner's statutory proposals. Within the next month, the Regents would adopt the regulatory provisions of the Ambach plan. The latter measures represented a profound step in the direction of reform. They would be put into effect immediately, by administrative fiat. However, the most significant changes concerning teacher discipline would still need to be made in the legislature. In that arena, matters were much more complex.

A third bill was about to appear in Albany. It would emerge from the office of Assembly Speaker Stanley Fink, whose power in the legislature was second to none. The Speaker's bill immediately became a source of great suspicion. All evidence seemed to suggest that the Speaker's bill had been drafted by the union. Critics saw it as an alternative to change, another manifestation of union power. Fink denied these claims, but the provisions of his bill were very telling. The Fink bill proposed that the three-person 3020-a panel would be replaced by a single hearing officer. This person would be chosen from a list provided by the American Arbitration Association. Thus, the hearing officer would not be an employee of the State Education Department, as had been advocated by the Commissioner and the Chancellor. The Fink bill would also remove the Commissioner of Education from the appellate process. This would make it impossible to increase the penalties assigned by a panel or hearing officer. All appeals regarding determination of guilt would be taken through the courts.

The Fink bill was strongly attacked by the Commissioner, the Chancellor, and the State School Boards Association. There were more accusations. A spokesperson for the Chancellor publicly charged Fink with selling out to the teachers' union.[64] Fink denied it. He claimed that his bill was drafted in response to a proposal submitted to him by the Erie County School Board. He was annoyed with the public allegations. Finally, Fink issued an ultimatum. Either his bill would be proposed to the legislature, or there would be none at all. The opposition continued. The result was a stalemate. Legislation to amend Section 3020-a of the State Education Law was never even introduced in committee. All discussion was ended. Section 3020-a would survive in the form that it had been written by the union in 1977.

SUMMARY COMMENTS

Upon close examination, there is a discernible pattern to the outcome of educational policy debates in New York City. While union support for an issue does not always assure passage, union opposition usually brings defeat. There are, of course, notable exceptions to this pattern. One was the implementation of the school decentralization law in 1968; another was the appointment of Frank Macchiarola as Chancellor in 1978. In both cases, the decision options carried had the aggressive backing of the New York City Mayor. Thus, the exceptions lead to another postulate: Outside the school bureaucracy itself, there are two significant poles of power with regard to educational policy in the City - the Mayor, and the UFT.

A fuller discussion of the Mayor will be taken up in the concluding chapter. His role is important in the present context only in so far as it modifies that of the union. The major focus here is the general proposition that was put forward concerning the union and its relevance to the more general themes and hypotheses of the overall study. Two questions are immediately pertinent. First, from the perspective of the Chancellor, what impact does the union have on the process of change? Second, to what extent does the union represent the interests of the school system clientele? The answer to both of these questions is the same. Sometimes the union is helpful, sometimes it is not. More will be said about the circumstances of each below.

Let us return now to the original proposition and review some of the evidence which supports it. In addition to its regular participation in collective bargaining, those issues on which the union has acted affirmatively include the local school budget, annualization of paraprofessionals, promotional policy, curriculum reform, teacher training centers, the School Improvement Project, the seniority system, and the enactment of 3020-a. In only two of these cases has the union position been defeated - once regarding paraprofessionals, and several times on the school budget. In each of these cases, the UFT was able to win some form of compromise in its defeat. In both cases, its losses were again suffered at the hands of an intensely involved Mayor.

Apart from the two exceptional cases already cited (decentralization and the Chancellor's appointment), those issues which the union has risen to oppose include the residency law, hiring quotas, teaching as a profession, the denial of pension rights, and the repeal or revision of 3020-a. In all these cases, the union achieved victory. Hence, the proposition is supported. This is not to say that the proposition which has been offered should be taken as a quantifiable truth, or to pretend that all the issues that are important from the union standpoint have been covered. However, it can be asserted with confidence that, on the basis of those issues dealt with in the text, the evidence is persuasive regarding the power of the UFT.

The power of the UFT is not difficult to comprehend. Here is a large professional organization with statewide and national associations whose membership consistently exhibits a high turnout rate during elections. Thus, it has been a major force in state, city, and neighborhood politics - not to mention the central and district school boards of New York. The influence enjoyed by the UFT in the state legislature is of particular consequence. There, in a major arena of educational policy making, the UFT is at a significant advantage when bills are introduced which relate solely to matters in New York City. Since a majority of the legislators are elected outside the City, they are more inclined to be sympathetic to the union, which enjoys a statewide power base, than to other interested parties in the City, whether they be the Chancellor, the Mayor, or any of the many activist groups concerned with education. This is evidenced by the plethora of "New York City bills" which emerge from the legislature. A case in point is the statute of limitations, which sets a stricter time limit for bringing certain City school personnel up on disciplinary charges than the standard which exists elsewhere in the state.

There are other occasions when the statewide affiliation of the union works against the objectives of local school officials in the City. This occurs when such objectives are perceived to be contrary to the interests of teachers in other parts of the state. A case in point was the recent campaign launched by City school officials to redesign the state school finance formula for the benefit of municipal districts. The UFT supported the campaign in principle, but the solutions it sought were counterproductive to the goals set by City officials. City school officials sought an entire redistribution of state school funds. Teachers in those school districts around the state who would lose money and jobs from such a redistribution opposed this strategy. Thus, the UFT and NYSUT would only support a "leveling up" approach which would increase funding to underfinanced districts without decreasing it to others. The union alternative did not turn out to be either a politically or financially feasible option during a period of such budgetary constraints. Therefore, the practical effect of efforts at school finance reform have proven to be negligible.

In the final analysis, the union supports those changes which it believes to be in its own interest. That is both reasonable and expected. However, from the perspectives of school system leadership and clientele, the outcome is mixed. The UFT has historically taken a conservative stance on the personnel issues of seniority and quotas. This has happened to the chagrin of many of the system's client groups. The union has also functioned as a progressive force with regard to such questions as student competency standards, teacher training, compensatory education, school improvement, and curricular reform. It remains the most important ally to the school administration on the yearly battles over the local school budget.

This chapter has highlighted the major and natural tension which exists between school officials and the union on the subject of teacher discipline. The union continues to deal with the question as a civil rights issue. The school Administration approaches it from the perspective of staff accountability - an integral complement to an agenda which emphasizes higher standards for students. An analysis of the politics surrounding the 3020-a debate shows that it bears a marked resemblance to the cases developed in previous chapters in that this single area of policy making involved so many individuals and institutions. Take note that the enactment, enforcement, interpretation, and repeal of 3020-a involved a local school board, the Board of Education, the Commissioner of Education, the Board of Regents, the state courts, and the state legislature.

One factor which distinguishes the 3020-a case study from the others appearing in this book is the existence of a singularly dominant interest group throughout the entire episode. Even the central Board of Education was reluctant to follow the recommendations of its Chancellor for the reform of 3020-a. In this sense, the UFT is unique. As suggested early on in the introduction to this text, in the language of political science, the UFT more often resembles a "core group" of decision makers in the policy process than it does a "satellite group" which attempts to affect policy by influencing those individuals with authority to make decisions. The outcomes in this case are very unambiguous. School teachers are the only employees in New York who continue to receive their pay when they are suspended for disciplinary reasons. School districts are the only public agencies which do not have final discretion (outside the courts) with regard to disciplinary charges and penalties against their employees.

Certainly the power of the union in educational policy making in New York cannot be described as unilateral. There is always the power of the Mayor to act as a counterforce when and if he chooses. The fact is that the Mayor is most likely to do so with regard to issues that involve money - specifically, money that originates from the City treasury. Other than occasional verbal endorsements for the Chancellor's cause, there was a conspicuous absence of activity on the part of the Mayor as the entire 3020-a unfolded. In assessing the power of the UFT, it should also be added that the union does not choose to become involved in every policy debate that occurs in New York on the subject of education. In preceding chapters, we have seen the union keep a relatively low profile with regard to special education and school desegregation. Hence, it is not always part of the attentive public.

The 3020-a case study provides an opportunity to observe the dynamics of a head-on confrontation between the schools Chancellor and the UFT. More specifically, it involves a situation where the Chancellor did not have the Mayor to call on for support during the more difficult periods of the battle. It demonstrates quite clearly that the union, when it chooses, can constitute a significant obstacle to change implemented at the behest of the Chancellor.

FOOTNOTES

1. See, for example, Robert Dahl, Who Governs (New Haven: Yale University Press, 1961); Nelson W. Polsby, Community Power and Political Theory (New Haven: Yale University Press, 1963).

2. Peter Bachrach and Morton Baratz, "Two Faces of Power," American Political Science Review, 56 (December, 1962). See also, Peter Bachrach and Morton Baratz, "Decisions and Non-decisions," American Political Science Review, 57 (September, 1963).

3. Agreement between the Board of Education of the City School District of the City of New York and the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO, covering Teachers, September 9, 1980 - September 9, 1982, p. 96.

4. Ibid., p. 24.

5. Albert Shanker, private interview, June 21, 1982.

6. A.M. Cresswell, Teachers Unions and Collective Bargaining in Public Education (Berkeley: McCutchan, 1980).

7. See, Roy R. Pellicano, The United Federation of Teachers and the Deficit Model of Urban Education. Ph.D. Dissertation, Teachers College, Columbia University, 1977.

8. See, Diane Ravitch, The Great School Wars (New York: Basic Books, 1974), chapts. 23 - 36; Marilyn Gittell, "Education: The Decentralization-Community Control Controversy," in Jewel Bellush and Stephen David, eds., Race and Politics in New York City (New York: Praeger Publishers, 1971).

9. "The Impact of School Decentralization in New York City on Municipal Decentralization," Study Prepared by the Charter Revision Commission for New York City, June, 1974, p. 66.

10. Ibid., p. 77.

11. Sterling Spero and John Capozzola, The Urban Community and Its Unionized Bureaucracy (New York: Dunellen, 1973).

12. New York Post, January 5, 1979.

13. New York Amsterdam News, April 7, 1979.

14. Ibid.

15. Supreme Court, Phil 1975

16. Asch decision; October 1978

17. Appellate decision, July 1979

18. Court of Appeals, April, 1980

19. New York Teacher, Vol. XVIII, April 24, 1977.

20. Ibid.

21. New York Teacher, Vol. XVIII, January 23, 1977.

22. Roy Moskowitz, private interview, April 29, 1981.

23. State School Board Association, Legislative Sub-Committee Report on 3020-a Hearings, September 11, 1979.

24. Board of Education of Belmont v. Gootnick, 49 NY 2d 683.

25. Adele Mockler v. Gordon Ambach, et al., 18 EDR 387.

26. Matter of Jerry v. Board of Education, 35 NY 2d 534.

27. Ted Elsberg, private interview, May 6, 1981.

28. Philip Kaplan, private interview, May 6, 1981.

29. Gordon Ambach, Memorandum to Members of the Board of Regents, Regarding Teaching as a Profession and Teacher Competence, December 6, 1979.

30. New York City and Buffalo require teachers to take specific tests in order to qualify for an appointment in these districts.

31. Carol Ziegler, Memorandum to David Wirtz, Regarding Commissioner's Recommendations on "Teaching as a Profession and Teacher Competence," January 2, 1980.

32. Correspondence from Anna Kaplan, to Frank J. Macchiarola, October 30, 1979.

33. Ibid.

34. Transcript, CBS-TV, Channel 2, Newsmakers, February 3, 1980.

35. Daily News, February 4, 1980.

36. Robert Hyland, WCBS-News 88 Editorial, "Discipling Teachers," 80-36, March 17, 1980, March 18, 1980.

37. New York Times, April 4, 1980.

38. Statement by Frank J. Macchiarola, Chancellor, New York City Public Schools, before the Public Hearing of the Board of Regents Concerning the Draft Proposals on "Teaching as a Profession and Teacher Competency," April 9, 1980, New York, New York.

39. Ibid.

40. Ibid.

41. David Wirtz, Memorandum to Frank J. Macchiarola, Regarding Disciplinaries and Removal of Tenured Pedagogues Pursuant to Education Law, Section 3020-a, April 7, 1980.

42. Ibid.

43. Ibid.

44. Frank J. Macchiarola, Letter to Community School Board 25, April 18, 1980.

45. Newsday, April 19, 1980.

46. Daily News, April 22, 1980.

47. Newsday, April 23, 1980.

48. New York Post, April 24, 1980.

49. Daily News, May 11, 1980.

50. Albert Shanker, "Chancellor Railroading Accused Teacher," Where We Stand, New York Times, May 11, 1980.

51. For example, one editorial in the New York Post on May 12, 1980, under the title, "A Dubious Crusade," questioned the appropriateness of Shanker's attempt to protect Drew's pension. Another editorial in the Daily News, on May 13, 1980, under the title, "Shame, Shame," branded Shanker's actions "scandalous."

52. Board of Education of the City of New York, Press Release, N-161, 1979-1980, News Bureau, May 15, 1980.

53. Ibid.

54. A CBS-TV editorial aired on May 21st and 22nd agreed with Macchiarola's position that teachers should be held to high standards, but was critical of his attempts to deny Drew a pension. The editorial argued that public sector pensions, as private sector pensions, should be considered deferred earnings, and should not be denied an employee because of improper behavior. A New York Times editorial published on July 25, 1980, similarly contended that pensions should be treated as deferred income, not as reward for good behavior.

55. Drew Retirement Decision.

56. New York State School Board Journal, December, 1980.

57. Total State costs for the administration of Section 3020-a during the 1980-1981 fiscal year were approximately $562,000 for 160 cases according to a memorandum prepared by the Counsel to the Commissioner. Robert D. Stone, "Memorandum in Support of 'An Act to Amend the Education Law, in Relation to Discipline Procedures for Tenured School District Personnel," June 5, 1981.

58. Statement by Thomas K. Minter, Deputy Chancellor for Instruction, New York City Public Schools, Before the Public Hearings of the Board of Regents Concerning the Draft Regulations to Implement Several Provisions of the Regents Plan on Teaching as a Profesison, February 25, 1981.

59. Gordon Ambach, Memorandum to The Honorable Members of the Board of Regents, Regarding Education Law Section 3020-a - Teacher Disciplinary Proceedings, April 22, 1981.

60. Thomas Y. Hobart, Jr., correspondence to The Honorable Gordon M. Ambach, May 19, 1981.

61. Frank J. Macchiarola, correspondence to The Honorable Gordon Ambach, May 20, 1981.

62. Ibid.

63. Frank J. Macchiarola, Memorandum to Members of the Board of Education, Regarding "Proposed Legislation Concerning Pedagogical Disciplinary Procedures," May 20, 1981.

64. New York Post, June 11, 1981.

CONCLUSION

POLITICS AND EDUCATION IN THE CITY

Many of the patterns that appeared to have emerged during the first three years of the Macchiarola Administration would continue into the fourth and the fifth. Governor Hugh Carey set the political stage for 1982 during the early days of the new year when he announced that he would not seek reelection for a third term. However, Carey did want to leave behind a significant legacy for which he would be remembered. Among the items put forth in the legislative agenda for his final year in office was school finance reform. At the time of the Governor's announcement, the existing finance formula had been found to be in violation of the state constitution by both the lower and appellate level courts. A final decision was still being awaited from the Court of Appeals, New York's highest tribunal.

Carey's position on the school finance issue had always been consistent. He had unsuccessfully tried to bring about reform for five consecutive years. He had become a particularly strong advocate since Justice J. Kingsley Smith handed down the original Levittown decision in 1978. The Governor wanted to achieve a radical redistribution of state education funds by decreasing the allotment made to property-rich districts and increasing the amounts made to those which were preperty-poor or financially overburdened by the costs of municipal services. In mid-February of 1982, Carey made public a new proposal which would increase state education spending by $8.6 billion over a period of five years. Approximately $740 million of this would be realized during the 1983 fiscal year. While New York City and many property-poor school districts stood to enjoy considerable gains in their share of education dollars, many of the wealthier districts would actually experience reductions in their allocations. The full package would be paid for by a one-percent increase in the state sales tax.

As the Governor's position on school finance reform was consistent, so was that of the legislature. Lawmakers in Albany had demonstrated many times before their reluctance to redistribute state education funds by reducing spending in economically affluent and politically powerful school districts. They were particularly adverse to doing so in an election year. Nor were they inclined to raise the state sales tax. What emerged from the capitol in the spring of 1982 was a $310 million increase in the state education budget. Although New York City and many property-poor districts enjoyed a disproportionate share of this supplement, each school district in the state, regardless of its local tax base, would derive some benefit from the new budget. There would be no significant reform in the state finance formula. There would be no substantial redistribution of funds.

The most severe blow to school finance reform in New York State was yet to come. On June 23rd, 1982, the Court of Appeals handed down a long-awaited ruling which upheld the existing state financing formula, and overturned the decisions of the two lower courts. In a six-to-one decision, the Court found that although "significant inequalities" exist in the availability of educational funds among school districts, the situation was not in violation of either the state or the federal constitution.[1] Writing on behalf of the majority, Judge Hugh Jones declared that disparities in spending were a function of local discretion, upon which it would be "inappropriate" for the courts to intrude. While recognizing a state constitutional provision for a system of "free common schools," the Court found no legal requirement that education be made available on an "equal or substantially equivalent" basis. Instead, the majority interpreted the provision as requiring only "minimal accepted facilities and services."

Thus ended any reasonable hope for a judicial remedy to the existing inequities in statewide educational spending. The final Levittown decision was followed by pledges from several of the plaintiffs to take the appeal into the federal courts. However, given the precedent set down by the Supreme Court in the Rodrieguez [2] decision, federal judicial intervention is highly unlikely. Henceforth, for both political and legal reasons, school finance reform in New York State remains an open and shut case.

The politics of the state gubernatorial election would make its way prominently into the affairs of New York City. In 1981, Mayor Edward Koch had run virtually unopposed for reelection. Consequently, in November, he was given approval by more than 75% of the voters in the most one-sided mayoral contest in the history of the City. In the winter of 1982, a very confident Edward Koch announced his candidacy for the governorship. This meant that for the second consecutive time, New York City would have an election year budget. However, the terms of election year politics in 1982 were different from those which prevailed in the previous year. In 1981, mayoral candidate Koch ran on a service budget - one which would raise popular expectations, expand agency programs, and maximize spending. In 1982, gubernatorial candidate Koch had to demonstrate fiscal responsibility. This called for moderation and some substantial cuts in the FY '83 budget. Politically, the premiere candidate for retrenchment was the public schools.

Koch's Executive Budget was submitted to the City Council and the Board of Estimate in early May. It provided for generous increases in police, corrections, sanitation, and social services, and for moderate increases in fire and transportation. [3] The school budget was slated for an $87.5 million cut. After much negotiation, the Council and the Board of Estimate managed to restore $30 million for the schools. However, the remaining $57 million reduction in local funds was still severe, particularly in light of an anticipated loss of $69 million in federal aid for 1983, as promised by Ronald Reagan.

Despite the difficult budget situation, the school system continued to show signs of progress. By the end of the 1981-1982 school year, the Administration began to make a major breakthrough in an area that had been a chief concern among the parents of public school children. That area was school security. A report released by the Office of School Safety in the summer of 1982 showed significant decreases in four out of five categories of serious incidences in the schools. Assaults declined by 15.4%, robberies by 26.4%, narcotics offenses by 7.5%, and sex offenses by 19.5%. [4] The only category of serious incidences where an increase was reported was that of weapons possessions (increased by 147.4%). This rise was attributed to the enforcement of a stricter identification and disciplinary policy enacted by the Chancellor over the previous year. At about the same time that the Office of School Safety data was published, the United Federation of Teachers released its own study on security. It showed that crimes committed against teachers in the schools had declined by 22%. [5] It marked the largest drop of such incidences in ten years. The report attributed the change to new policies and programs instituted by the Chancellor through the Office of School Safety. The two reports on security once again put the public schools in the headlines of the local newspapers. And again, to everyone's comfort, the news reported was good news.

Of course, in so far as the progress of the public schools was concerned, the overwhelming issue on most people's minds was still that of student achievement. Here also, the facts were encouraging. Data from the California Achievement Test (CAT), released in June of 1982, showed that for the second consecutive year New York City school children were reading above the national norm. In fact, there was a slight increase over the performance level of 1981, with 51.0% (as opposed to 50.8%) of the students in grades 2 through 9 reading at or above grade level.[6] It was the third consecutive year in which the citywide reading scores improved. A closer analysis of the data also revealed that over the past four years, the percentage of students reading two or more years below grade level was reduced from 15.1% to 8.8%.[7]

The 1981-1982 school year was the first in which a standardized mathematics test was used to determine eligibility for grade advancement under the Chancellor's Promotional Policy. According to the new standard, any child in a "Gate" grade (4 or 7) performing two or more years below grade level on the Stanford Diagnostic Mathematics Test (SDMT) would be denied promotion and become a candidate for remediation. Notwithstanding the anxiety produced by the new standard, the release of the SDMT scores in June proved to be another occasion for jubilation. Approximately 56.5% of those students who took the exam scored at or above grade level. This amounted to a nearly 7% improvement citywide over the 1981 scores (49.6%), with progress being found in all thirty-two of the City's local school districts. [8] Most significant of all, this represented the first time in over a decade that New York City school children exceeded the national norm in both reading and mathematics.

Not all of the news concerning student achievement was so uplifting. In keeping with the Chancellor's Promotional Policy, 17,566 students in the fourth and seventh grades would be denied promotion based upon their reading scores. [9] Of this group, 8,179 were also found to have unsatisfactory scores in mathematics. An additional 5,417 would be heldover solely on the basis of the math results. [10] The combined number of holdovers for reading and mathematics in 1982 (22,983) did, however, compare favorably with the 23,509 held over just on the basis of their reading scores in 1981.

The most discouraging development emerging from the 1982 test results involved those students who became known as the "double-holdovers." Of the 23,509 students who became candidates for retention in June of 1981, 5999 were promoted on the basis of the August retest, and another 1,757 met the requirements for promotion during a January, 1982 exam. [11] Of the remaining students who participated in the Gates remedial program through the end of the 1981-1982 school year, 7,098 again failed to meet the requirements for promotion in June. While this group was considerably less in number than the original class of holdovers (23,509) identified a year earlier, and a small part of the 120,000 students who had first sat for the 1981 exam, it was still a matter of legitimate and serious concern for school officials.

The prospect that a population of more than seven thousand children would be required to pass through the same elementary or intermediate grade for the third time was disturbing. This eventuality had been a major fear of the critics of Promotional Policy. Its actual occurrence rekindled many of the deep-seated doubts articulated by the opponents two years earlier. Was the school system really prepared to deal with these children? Did educators know what to do in order to improve their achievement levels? Should these children have ever been held over in the first place?

In the spring of 1982, the United Parents' Associations (UPA), the chief opponent of Promotional Policy, completed its own evaluation of the Gates remedial effort. Surprisingly, the results of the study were generally positive, finding that school officials were "highly responsible" in providing the level and kinds of services that they had promised.[12] However, the UPA report raised a number of important questions concerning the long-range plans for the program. There was particular concern regarding the double-holdovers. There was reference to uncertainties over the long-range future of the program. The fact of the matter is that the City had never made a long-term commitment to the program. Funding had always been uncertain, and when received, it was usually the result of last-minute negotiations and political manipulations. Yet money remained a prerequisite for an effective remedial effort.

As it had in the past, the UPA also challenged the validity of using the CAT exam as an instrument for determining eligibility for student promotion. The CAT is a "norm-referenced" examination. Standard acceptable educational practice calls for the use of a "criterion-referenced" instrument for individualized student assessments. The Administration had originally planned to replace the CAT exam with a norm-referenced test after the first year of the program. However, because of doubts concerning the adequacy of the available instruments, and a desire to maintain a capability for longitudinal analysis, the Chancellor decided to continue with the CAT and work with the technique that had been developed to convert the scoring.

In the spring of 1982, the Chancellor took several measures in response to the concerns of his critics. The statewide Degree of Reading Power Test (DRP), administered on an experimental basis in several districts for two years, was administered citywide. The teachers of those students who did not attain satisfactory scores on the CAT, but did well on the criterion-referenced DRP, were granted the right to appeal a decision concerning promotion. This policy would introduce both a new instrument and a wider range of teacher judgment as criteria for promotion.

The Administration also announced the initiation of several new efforts on behalf of the double-holdovers. Class sizes for this group would be reduced to 15 or less students so as to allow for the maximum degree of individualized instruction. (Class size for the regular Gate remedial classes was 20 or less.) Seventh grade students would be given specialized training in vocational education so as to help them develop a wider range of skills. In addition to these instructional initiatives, all potential double-holdovers were put through a complete medical screening to determine whether their learning problems were health-related. The latter decision was made after it was discovered that 25% of the Gates program children in a Brooklyn school district who had been examined were in need of eyeglasses.

As the Administration went about the task of designing alternative strategies for accomodating the needs of its first class of double-holdovers, a larger effort was being planned in another part of the school bureaucracy to address the growing and no less perplexing problem of special education. When school opened in September of 1982, the special education population had grown to 102,250 students. This was almost double the enrollment that existed when Macchiarola took office in 1978. By the end of the 1981-1982 school year, the Division of Special Education had accomplished a major reorganization. Responsibility for the delivery of school-based services at the secondary level had been effectively transferred to the High Schools Division. An experiemnt along the lines of the Harrison House proposal had been put into place in five local school districts.

However, litigation would continue. The plaintiffs in the *Jose P.* case were not yet satisfied with either the quantity or quality of services provided to the handicapped. When school opened in September, the number of children backlogged on the evaluation waiting lists for more than thirty days (the legally defined limit) exceeded 3,200. In the meantime, the budgetary situation was becoming more strained. In the spring of 1982, the court-appointed Special Master Marvin Frankel submitted his resignation to Judge Eugene Nickerson. Frankel complained that the case was beginning to absorb too much of his time. It would not allow him to follow through on his other professional commitments. As the new school year began, the plaintiffs were appealing to Judge Nickerson for the appointment of a new master with expanded administrative powers. The defendants submitted papers to the court requesting an amendment to the original judgment that was more consistent with the financial and pedagogic capabilities of the school system.

No one knew quite what to do with the situation in special education. The demand for services was continuing to grow in geometric proportions. The resources available to meet the costs were becoming more constrained. There was still no overriding professional consensus on the merits of the mainstreaming strategy; and many educators within the school system were beginning to question the wisdom of categorizing so many children as handicapped. Nevertheless, there were also those students with handicapping conditions who had a legitimate need for more and better service.

On June 28th, 1982, the Supreme Court of the United States handed down its first decision related to the Education for All Handicapped Children Act. The case was brought on behalf of Amy Rowley, a deaf student in Peekskill, New York. Amy had been receiving a number of special services from the Furnace Woods school she attended. However, her parents claimed that in order for Amy to be able to fulfill her maximum potential, she should be provided with a sign language interpreter. They argued that it was her right under federal law 94-142. The Court disagreed. It found that the "free appropriate education" guaranteed under the law "consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." [13] In interpreting the intent of the law, the Court found "no requirement" that states maximize the potential of handicapped children commensurate with the opportunity afforded other children. While the 6 to 3 decision affirmed the basic objectives of P.L. 94-142, its net effect was to place a limit on the legitimate claims of the handicapped under federal law.

Shortly after the Rowley decision was handed down, the Reagan Administration announced that it was proposing a revision of the federal regulations enacted to enforce P.L. 94-142. The purpose of the recommended changes was to relax the requirements for special education imposed on the states. The revisions were designed to impact state responsibilities in the areas of direct instruction, support services, and due process. These proposals were expected to receive considerable opposition from the Congress. However, their announcement signalled a message that had already been implicit in the Reagan Administration budget: the White House would prefer to reduce the level of educational services made available to handicapped children rather than provide the funds that are needed to meet the obligations defined in the legislation of 1975.

On June 30th, 1982, the Supreme Court handed down two more important decisions with regard to public education. Both involved the power and responsibilities of the states as they related to desegregation. In an 8-to-1 decision, the Court upheld an amendment to the California constitution which limited the power of the states to order busing beyond the requirements imposed by federal law.[14] The amendment had been passed in opposition to a state court order that required busing as a remedy to de facto segregation. Concurrently, the Supreme Court affirmed lower court rulings which overturned a Washington state law that prohibited local school districts from implementing mandatory busing.[15] While neither case represented a major breakthrough in the Court's position on school desegregation, together the two decisions served to reaffirm several basic principles that were part of the judicial precedent. Both rulings indicated that the Court continues to take seriously the distinction between de facto and de jure segregation, thereby applying intent as a significant criterion for federal judicial intervention. While the Court would not put a federal sanction behind a state attempt to assume an aggressive policy in remedying de facto segregation, it would not allow a state to exercise authority that would arbitrarily define the appropriate response to a segregated situation.

In the meantime, there was less devotion to legal precedent and past federal practice exhibited in the executive branch of the government. In July of 1982, the Reagan Administration publically endorsed a Senate bill that would limit the ability of the federal courts to order busing and prohibit the Justice Department from spending any funds on desegregation suits where busing is a remedy. During the following month, the Justice Department petitioned a U.S. Court of Appeals in New Orleans to delay consideration of a busing plan in East Baton Rouge, Louisiana until an attempt could be made to develop a voluntary solution to a segregated situation. The request was a first in the history of the Justice Department, which has always served as a powerful force behind school desegregation.

There are many arguments that can be offered to depict the advantages of voluntary desegregation plans over forced busing - not the least of which is the association that has been drawn between the latter and the phenomenon of white flight. However, there is a basic irony to the Reagan Administration's approach to public education. Those programs that can be used to attract white children to predominantly minority schools often cost money. The White House has been steadfast in its desire to reduce the federal investment in education. So long as the federal government ignores its obligation to improve the quality of education in schools with a predominantly minority population, then the only children who will attend these schools are those who have no real choice. From the perspective of an urban school system, the implications of such a policy are significant in both a demographic and political sense. We will discuss these broader policy issues at greater length. But first, let us return to the affairs of New York City.

THE CHANCELLOR'S DILEMMA: CONSTITUENTS AND CLIENTS

The case studies presented in the preceding chapters support the fundamental notion that educational policy making in New York City is a political process. The outcomes of the process are a product of conflict and compromise factored by a multiplicity of actors. These actors include a host of governmental authorities and an assortment of attentive private parties. The basic causes of such conflict are twofold; they include interest and ignorance. The concept of interest is by no means a novel one in the literature on politics. It derives from a political actor's perception that he or she will be favored by the choice of a particular policy option. That perception may or may not be valid in any given situation. Nevertheless, conflict results when two or more actors consider their interests to be contradictory. There were several examples of such an occurrence in the preceding pages: the battles over school finance reform, the demand for upgraded services by the handicapped, the several controversies over school desegregation, the disagreements concerning disciplinary procedures for school teachers. Political scientists refer to such encounters as interest group politics.

Our case studies demonstrate that conflict also results when policy makers and interested parties have no clear or proven notion of what direction to take with regard to a given problem or issue. Thus, we have observed serious and well-intentioned debate on the merits and uses of competency testing. We have witnessed deep divisions in the professional community concerning the efficacy of alternative approaches to educating the handicapped. While social science research has informed these debates and helped us to distinguish between what we know and what we don't know, the evidence on such questions lacks the authority or reliability that is needed for resolution. Thereby ignorance causes conflict.

As a result of political conflict, whichever the source, the urban school system is the object of numerous cross pressures. In New York City, this situation creates an unenviable predicament for the Chancellor. It also defines a major component of his job. In a highly charged political environment, there are few significant policy options which will not incur the wrath of some public official, governmental institution, or private group. Should the Chancellor ignore the demands of retrenchment, or should he reduce services to the poor and the handicapped? Should he force a local school board to desegregate a school facility, or should he allow minority children to be denied equal access to a building? Should he tolerate a system of disciplinary procedures that invites abuse, or should he risk being seen as an adversary by the large majority of teachers who do their jobs well? Political decision making usually involves selection from among an offering of undesirable choices, all of which generate some level of resistance.

A central role of the Chancellor in New York City, as that of any other urban superintendent, is to respond to and, when possible, resolve conflict that originates outside the bounds of the school system. Ironically, however, in an Administration that is dedicated to the implementation of a significant measure of change, the Chancellor himself becomes a source of conflict. Therefore, the Chancellor who would cast himself as an agent for change must, by necessity, devote a large share of his time, energy, and effort to the external environment. Let us consider, for a moment, those external demands made upon the Chancellor during the first month of his tenure. These included:

- Renegotiating the FY '78 budget proposed by outgoing Chancellor Irving Anker
- Developing a strategy for the Levittown case
- Appealing to legislative leaders for reform of the state school finance formula
- Promoting support among Community Superintendents for plans involving smaller class sizes in the first grade, transitional classes for holdovers, and the extended use of school buildings
- Developing a budget proposal for FY '79
- Negotiating the UFT contract and a plan for the annualization of paraprofessionals
- Drafting a proposal for a residency requirement for submission to the Board of Education
- Responding to special education litigation in the Lora case
- Responding to special education litigation in the Jose P. case
- Responding to the State Commissioner's regulations and orders regarding the education of the handicapped
- Responding to the State Commissioner's initial proposal for new competency standards for high school graduation
- Responding to litigation involving the segregation of Jackson High School

- Responding to an investigation by the U.S. Office for Civil Rights concerning the segregated setting in the I.S. 231 annex

These demands represent only a small part of the external pressures directed at the Chancellor's Office during the early days of the Administration. More specifically, the list includes only those events related to the case studies covered in this text. A more complete chronicle of the Administration's activities during the period in question would expand the size of the list several times. The important point to be made here is that a significant part of the Chancellor's working agenda must be focused on the external environment. At times, this kind of responsibility becomes a distraction from the internal management of the school system. Notwithstanding the peculiar influence which bureaucratic organization and behavior have on internal operations, external politics remains a major obstacle to both the managerial and change processes.

One might classify those external actors with whom the Chancellor interacts into three categories. There are those to whom he is directly accountable on a regular basis; there are those to whom he is accountable on a less constant, issue-by-issue basis; and there are those public and private groups which exercise an ongoing influence on policy, but to whom the Chancellor is not formally accountable. The first category consists of the seven-member central Board of Education, which appoints the Chancellor, and the Mayor, who exercises discretion over the level of financial resources made available to the school system. The second includes such governmental actors as the City Council, the Board of Estimate, the state Commissioner of Education, the state Regents, the state legislature, the state courts, the federal courts, and the executive branch of the federal government. Although those in the latter category do not maintain as intimate a role in local education as those in the former, their impact is considerable in cases where it is appropriate for them to exercise authority.

A third category of public and private parties includes such participants as community school boards and their superintendents, the United Federation of Teachers, the Council of Supervisory Associations, the Educational Priorities Panel, the United Parents' Associations, Advocates for Children, the Public Education Association, and a host of professional, civic, and neighborhood organizations that have a direct or indirect stake in public education. As already noted, the Chancellor is not accountable to the actors in this category in any formal or legal way. However, his dependence upon them for the support of his policies or programs is such that he is accountable to them in a political sense.

A case in point is the local community school boards and their superintendents. One might say that formally it is they who are accountable to the Chancellor, since he has the legal responsibility to establish and enforce minimum educational standards citywide. Macchiarola used this authority to institute his Promotional Policy. Nevertheless, as that case demonstrated, practically speaking, if local school officials do not support policy initiatives at the implementation stage, they cannot be put into practice. Because the Chancellor must earn the support of these actors to be effective, he is, in fact, politically accountable to them. This same type of political relationship exists between the Chancellor and the other private interest groups that have been included in our third category, although perhaps more so in the adoption rather than the implementation stage of the policy process.

Yet, the point to be made is clear: political accountability goes beyond the legal institutional arrangements that are set down in the city charter or state constitution. The constituency to which the Chancellor is accountable is wide and varied.

A key question still remains: Whom do these constituents represent? More specifically, is it in the interest of the clientele of the school system that they apply their influence over the policy process? The demographic data suggests that public education in New York, as in other urban centers, is increasingly becoming a poor people's service, with a disproportionate representation of racial minorities. The institutional and political structure of the decision making mechanism does not readily lend itself to the representation of those client groups. A case-by-case consideration of these various constituents is very telling.

On the local government level, the electorate which selects the Mayor, the City Council, and the Board of Estimate is composed primarily of a white middle class population. For practical political reasons, it is reasonable to expect that the priorities of this population will be reflected in the local tax levy budget. Our longitudinal analysis of retrenchment and the cases presented on the budget bear that expectation out. Among the most severe casualties of cutback management in New York has been the school budget. At least part of this pattern can be explained in political terms.

A little more than a decade ago, the central Board of Education and the school bureaucracy at Livingston Street were among the major targets of those local activists who advocated community control. Rightfully, these reformers argued that the central Administration at Livingston Street was a closed system. Their leaders pointed out that the institutions they inherited from the past were not responsive to the needs of a newly constituted clientele. Several observations can be made with regard to these concerns as a result of the preceding case studies. During the first three years of the Macchiarola Administration, the Chancellor's Office has been the beneficiary of a major shift in policy making initiatives away from the central Board of Education. Given that this Administration arrived ten years after the birth of decentralization, it is safe to conclude that the shift is less a function of institutional reform than it is a result of Macchiarola's aggressive leadership. While the central bureaucracy continues to live on, there is good indication that its once unmitigated power has also abated. These two observations are related. Since the central Board of Education has traditionally functioned as a protector of this archaic bureaucratic mechanism, a decrease in the role of the latter is at least partially the result of the decline of the former.

There is now some evidence that under certain conditions, school decentralization in New York has proven to be successful in improving accountability, participation, innovation, and performance.[16] However, the evidence presented in the preceding chapters is less encouraging. Particularly with regard to school desegregation, the most highly charged racial issue discussed in these pages, some community school boards have shown themselves to be insensitive and unresponsive to the demands of the minority community. Community school districts have been among the most blatant perpetrators of intentional or de jure segregation in New York. In no place is the fracture between constituent and client so apparent than in the districts, where in most cases, a popularly elected, predominantly white school board governs the affairs of a local school system attended mostly by blacks and Hispanics.

Perhaps decentralization represents progress over the bureaucratic mechanism that prevailed more than a decade ago, but there is still much work to be done in order to achieve the democratic goals articulated by its original proponents.

When one turns to the state policy arena, the events surrounding the first three years of the Macchiarola Administration seem to reveal a sincere commitment on the part of the Regents and the State Commissioner to enact reforms that appeared to be beneficial to school children in New York City. While there was much debate surrounding the Regents campaign to establish competency standards for high school graduation, the plan was put forward as a legitimate attempt to impose higher expectations of performance on school districts. While the Commissioner was not always in agreement with the Chancellor, he proved to be a sympathetic force on behalf of new policy initiatives and reforms. Thus, in addition to being a proponent of higher competency standards for students, the Commissioner was a supporter of improved services for the handicapped, school desegregation, and the appeal of section 3020-a.

Notwithstanding the signs of hope offered by the Regents and the Commissioner with regard to the interests of school children in New York City, a fuller consideration of the role played by the state actors in the policy process is not so encouraging. The most serious problem area is found in the existing school finance formula, which has historically reflected the anti-urban bias that dominates the legislature. Evidently, this policy will continue. Would-be reformers have customarily looked towards the courts as an ally for the rectification of past practices. Now, however, the highest court in the state has found that inequality in educational service is legally tolerable. The performance of the state courts with regard to the desegregation controversy in Rosedale was no less disappointing. Indeed, the events there seem to suggest that the lower level of the state judiciary functions as an extension of the county political structure - an establishment that was found to be downright inimical to efforts to correct illegal racial isolation in a school.

The most troubling development in the external environment of the city school system is that emergent in the federal government. Ever since the Supreme Court handed down the Brown decision in 1954, advocates of equal rights have worked through the federal judiciary in order to protect the educational entitlements of such disadvantaged groups as the poor, racial minorities, language minorities, and the handicapped. Ever since the enactment of the Elementary and Secondary Education Act (ESEA) of 1965, the federal government has served as a crucial source of support for programs designed to upgrade the quality of educational services for the poor. Now the Reagan Administration has pledged to turn back the clock. The retreat is manifest not only by a financial disinvestment in public education, but also by a reluctance on the part of federal attorneys to enforce civil rights through litigation. Consequently, the Justice Department has adopted a softer position with regard to de jure segregation. In the meantime, the Secretary of Education has proposed new regulations that would weaken the protections afforded to the handicapped under Public Law 94-142.

Without doubt, the philosophy enunciated by the Reagan Administration is a response to the national public sentiment. It is indicative of a rising conservative tide that began with the election of Richard Nixon, and has been growing within both the executive and legislative branches of the government. What remains to be seen is whether this emergent conservative ideology will also come to dominate the Supreme Court, which, since the appointment of Chief Justice Warren Burger, has more closely reflected the more conservative public philosophy of the nation.

The overall evidence on the subject is rather persuasive. For the most part, the external political environment of the city school system is unsympathetic to the interests of that population which consumes its service. In the hope of establishing new policies and programs that are more responsive to the needs of the school population, the Chancellor must negotiate his agenda through a local government that is elected primarily by the white middle class, a state government that has displayed a traditional anti-urbanism, and a federal establishment that is bent on reducing its commitment to public education. These are the public authorities to whom the leadership of the school system is accountable. And herin lies the great dilemma of the Chancellorship, and the urban superintendency in general: Those authorities and groups to whom the Chancellor is accountable are not particularly representative of the clientele that the school system is supposed to serve.

Of course, there are those private interest groups to whom the Chancellor is politically accountable, who bring to the policy arena a basic commitment to public education. However, the impact these groups exert on the policy process is inadequate to overcome the environmental constraints that exist on an institutional level. In terms of influence, it has been shown that first and foremost among these groups is the UFT. While the union has emerged as a major political force on behalf of public education in the city, the fact remains that the constituency of the union is drawn from those who work in the public schools rather than those who attend them. For the most part, it can be said that the interests of these two populations have coincided. However, when they do not, it is logical to expect that the union will support the position of its members.

What remains in the immediate environment of the school system is that assortment of public interest groups in the city which have historically participated in the local policy process.[17] Few would deny that these groups harbor a genuine commitment to public education and the children who attend city schools. However, most local political observers would agree that the power of these groups has subsided, along with a once more vocal and influencial middle-class population that at one time had a more direct stake in the public schools. One might also add a caveat to this generally astute political observation. The power of these groups is most formidable when it is used against the leadership of the school system itself. Most conflicts of this sort are concerned with questions of technique. They are a natural outgrowth of the state of the art in the educational profession. We have previously referred to this phenomenon as ignorance. We have witnessed its presence in discussions on how best to upgrade the competency levels of students, and how best to serve the needs of the handicapped. Those individuals most likely to engage seriously in such debate are those who care most about education. The net political effect of such debates, however, is to strengthen the arm of those who do not.

From the perspective of the Chancellor's Office, the participation of these educational interest groups in the policy process often represents a rather unprofitable political trade-off. Their influence is insufficient to substantially alter the institutional and political balance of power that penalizes the school system. However, given the fact that these groups often bring their own level of expertise to debates of a pedagogical nature, their opposition is potentially devastating.

In the final analysis, the case studies in this book give us much reason to question the conventional wisdom that once prevailed concerning the bureaucracy that is housed at Livingston Street. Prior to decentralization, critics of that institution consistently described it as a closed system which was not responsive to the wants and needs of its clientele because it was not receptive to demands from the external environment. Now that diagnosis is at best only partially true. The bureaucracy at Livingston Street is indeed an open system, susceptible to the demands of a wide variety of outside institutions and groups. The problem is that those outside actors who are most successful at manipulating the system are not by and large representative of the service clientele who rely on the schools. Implementing change under these conditions is a rather precarious and paradoxical process. It must defy political reality. It involves attempting to take what is basically a highly political institution and making it responsive to the needs of a population which does not possess the fundamental ingredients for political power.

BUILDING BRIDGES: RECOMMENDATIONS

Prescriptions for institutional reform usually flow from an assessment of the status quo which points to flaws or misconceptions in the ongoing arrangement which disallow or hinder governmental officials from performing at a desired level. An analysis of the events that occurred between 1978 and 1981 has led to several conclusions concerning the politics of education in New York, as seen from the perspective of the Chancellor's Office. We have observed that the occupant of that position is the object of numerous cross pressures from the external environment which, if abided by, would prohibit the development of a consistent policy agenda for the school system. The volume and intensity of these demands from the outside have been found to be both a distraction from internal management, and an obstacle to change. In light of the more normative ideals of democratic government, the most serious flaw in the situation described derives from a notable gap which exists between those constituents to whom the Chancellor is legally or politically accountable, and those clients whom the schools are supposed to serve.

The individuals identified as those to whom the Chancellor is most directly accountable on a regular basis included the central Board of Education and the Mayor. It should be further explained that the reporting relationship between the Chancellor and the central Board more accurately reflects seven lines of accountability than it does one. While not particularly evident in the events described in this volume, the truth of the matter is that the individuals who sit on the Board are often not in agreement. The five members appointed by the Borough Presidents all represent different geographical localities, each with its own parochial interests. The two members appointed by the Mayor are usually drawn from different racial, ethnic, or religious groups. Therefore, although the leadership role of the Chancellor's Office has been enhanced under Macchiarola, most insiders would agree that a good deal of staff time is still spent appeasing and responding to the pet concerns of the seven individuals who inhabit the eleventh floor at Livingston Street.

Largely because of its concentrated power over the local budget, the Mayor's Office has been referred to as one of the two significant poles of external influence with regard to educational policy making in the City. (The other is the United Federation of Teachers.) It has also been noted that, when considering the policy process through the implementation stage, a third arena of significant influence includes the local community school boards and their superintendents. Assuming that institutional reform will alter neither the power of the union nor its disposition on policy issues, the recommendations to be proposed here will focus on the remaining three institutions. Based upon what has already been said about the political realities of the situation, the plan offered here is premised on the need to instill within the local governing institutions a closer identification with the problems of the school system and the interests of its clients.

The cornerstone of this "bridge-building" plan involves recasting the authority and responsibility of the Mayor in the realm of education. Specifically, it calls for the elimination of the seven-member Board of Education, and the replacement of the Chancellorship with a Commissioner of Education. As is the case with most other municipal agencies in the City, the Commissioner of Education would serve at the pleasure of the Mayor and become a member of the Mayor's cabinet. This institutional restructuring would increase the accountability of the school system and center responsibility for the quality and effectiveness of educational services with a popularly elected official.

Since the turn of the century, there has been a widely held notion in American education that the more detached schools are from the political process, the better. Educational policy making, it was believed, should be left in the hands of professionals, who come to the task with training and expertise. A more popular spirit could be injected into the process by the selection of a lay board of education, but politicians should be kept out at any cost. As we now have moved well into the last quarter of the century, there still exist large remnants of the old philosophy and tradition. It is manifest through the existence of autonomous and semi-autonomous school boards which hide behind an artificial shield that bears the inscription, "Keep Politics Out of Education." In most cases, this shield is deeply penetrated by the realities of political life. To the extent that it does provide shelter, it functions merely to harbor a more narrow arena of school politics, but politics it is just the same. The New York City Board of Education is a case in point.

Historically, the New York City Board of Education has served as protector of one of the most entrenched public bureaucracies in the history of the nation. The ranks of that institution have now been infiltrated by outsiders. However, few contemporary observers would argue that the survival of the central Board has worked to remove politics from the policy process. Certainly, the preceding chapters offer ample testimony to the contrary. In fact, the episodes unfolded show quite clearly that, rather than serving the interests of the school system and its children, the intended separation has often worked to their disadvantage.

Admittedly, a good part of the budgetary tensions between City Hall and Livingston Street are constituency-based, for those people who elect the Mayor are not by and large the ones that use the public schools. However, that explanation does not tell the entire story. The present institutional setup cultivates a natural animosity, and when hostilities are played out, the schools are the loser. Because the Mayor appoints only two members of the seven-person Board, he enjoys the luxury of deflecting any real responsibility for what happens in education. Given this option, a popularly elected chief executive can be expected to direct budgetary priorities towards those services for which he (or she) bears direct responsibility. As the events surrounding local budget negotiations have illustrated, the school budget has been a major source of frustration to municipal officials. Their only direct and unambiguous connection to the school budget is on the paying end. Financial accountability has been at best difficult and generally quarrelsome. It is not surprising, therefore, that the Mayor has been a reluctant giver. A more direct reporting line between City Hall and Livingston Street could only help to alleviate the tensions that have been so evident. It would endow the Mayor with a more personal stake in the future of public education.

The creation of a City Commissioner of Education appointed by and responsible to the Mayor, would also carry several managerial benefits.

First, there would be the obvious savings resulting from the elimination of the seven-member Board of Education, whose budget exceeded $1.5 million in the 1982 fiscal year.[18] More importantly, having an education commissioner who is a member of the Mayor's cabinet would provide a more appropriate institutional setting for the better coordination of youth-related services. Presently, there are a number of municipal agencies in New York which provide important direct services to young people. They include such important general functions as health, mental health, recreation, employment, and delinquency prevention. However, coordination among these services has been meager, particularly since schools, the service units which provide the most important service to the young, are part of a semi-autonomous agency, which has historically placed a high value on separation.

Mayor Edward Koch recognized this coordination problem in early 1982 when he appointed a Mayor's Task Force on Youth, the purpose of which was to bring about better cooperation among the various service agencies. By appointing the Chancellor of Schools as Chairman of the task force, Koch had hoped to lessen the gap which has traditionally existed between the schools and municipal agencies. While this move has been a step in the right direction, it does not go far enough. The Chancellor of Schools has no real line authority over the heads of the municipal agencies that belong to the task force, nor does the Mayor have any with regard to the Chancellor. What is really needed to facilitate the coordination task is the appointment of a Deputy Mayor for Youth Services, as there once existed a Deputy Mayor for Criminal Justice. The new Deputy Mayor would enjoy direct line authority over all municipal agencies that provide essential basic services to youth. However, in order for this institutional arrangement to be effective, the group of agency heads would have to include a Commissioner of Education appointed by, and accountable to, the Mayor.

Conceivably, there are those who could offer a rather strong political argument against enhancing the power of the Mayor regarding education. After all, it has already been emphasized that the political constituency which elects the Mayor is not the same as the service clientele of the schools. What would prevent the Mayor from further descimating the school budget, more along the lines of Koch's original and more radical proposals for retrenchment? Was it not the Board of Education's political independence (or, more accurately, its semi-autonomy) which allowed it to contest the Mayor's financial plan each year?

There is some validity to the above arguments, but they are only partially true. The seven-member Board of Education, in itself, did not represent a significant force on behalf of the school budget. Quite frankly, the Board does not enjoy a substantial amount of political credibility on the local political scene. Perhaps, the semi-autonomous institutional arrangement did allow the Chancellor to be a more aggressive advocate for his agency than a Mayorally elected Commissioner could be. However, what made Macchiarolla effective was his own personal accomplishments as Chancellor. What gave Macchiarola access to City Hall, a privelege enjoyed by none of his predecessors, was the fact that he had been the Mayor's own personal choice for the position that he held. What gave Macchiarola credibility, was his own personal relationship with the Mayor, which, despite the disagreements, was a good one. In the end, however, considering the institutional questions apart from any given set of unique personalities, the real base of political support for the schools must come from the communities, not the Chancellor's Office. This brings us to our final recommendation regarding New York City.

School decentralization has provided educators with an institutional advantage that is not available to any other local service agency in New York. That advantage is the potential for the development of a broader political base for the service it provides. Here are thirty-two neighborhood boards, popularly elected by people who live or work in the City's communities. The problem, however, as suggested earlier, is that local school boards are not always representative of the populations which attend the schools. The turnout for school board elections, somewhere around 10% citywide, is an embarrassment. Because these contests are held at a different time from the November general elections, most individuals are unfamiliar with the candidates or the issues. School board elections are non-events that take place in the City once every three years with little recognition or interest.

The balloting for community school board members should be held in conjunction with the regular November elections. This will maximize popular participation. It will provide an incentive to candidates to make themselves and their positions known. While changing the time of elections will not provide the needed motivation to engage the poorest and most alienated sector of the population in political activity, the wider participation that can be expected should result in a more representative electorate, or at least, an electorate that has more in common with the clientele of the school system. For those political activists who have devoted time and energy in support of public education, a more meaningful school board election process can offer a rather significant forum for broadening the political base behind their cause.

It is not the intention here to further politicize the educational profession in New York City. What these proposals are meant to do is recognize the political realities of educational policy making in order to erect an institutional structure which is more responsive to the needs of public school children. The first three years of the Macchiarola Administration have demonstrated that it is possible to have strong educational leadership simultaneously within the central headquarters of the system and the districts. We must now take the next step. What is needed is sympathetic and strong managerial leadership from City Hall that is supported and instructed by a broad political base from within the communities.

AN AGENDA FOR URBAN SCHOOLS

One question remains. What can be learned from the experiences and circumstances in New York City that is of relevance elsewhere? Many people consider New York unique among urban school systems. In actuality, its most distinguishing feature is its size - a factor which more peculiarly defines the internal managerial tasks of the system than it does those critical variables which shape its external dynamics. In so far as the multiple forces in its political and social environment are concerned, New York shares a lot in common with most urban school systems - not to mention a growing number of suburban districts which are undergoing significant changes in size and population.

Most inner-city school districts have come to serve a clientele which is more predominantly recruited from poor and minority populations. Since the enactment of Public Law 94-142, each has been called upon to become more sensitive to the needs of handicapped children. Many urban school systems have been through a tumultuous experience with desegregation - one which in many cases has aggravated racial tensions within already polarized communities. No public school system in the country has escaped the painful financial retrenchment that has been imposed by all levels of government, nor have many remained unaffected by a declining public confidence in the educational enterprise. These are not just the characteristics of New York, they are the problems indigenous to an increasingly urbanized nation.

There is much diversity in the local governing structures of school systems. However, all are accountable to the same assortment of public authorities that reign at other levels of government. Notwithstanding the rhetoric and reformers of the sixties, school districts are probably the most open of all local service delivery systems in terms of the number of outside officials to whom they must respond. In addition to reporting to a local school board, many superintendents in financially dependent districts are accountable to municipal officials and a local legislature. Beyond the local level, all school districts must function within the bounds of rules and regulations set by a State Commissioner and Board of Regents. One might add to this list, as in New York, a state legislature, state courts, federal courts, and the federal administrative and regulatory structure in Washington. When viewed from a more political perspective, the constraints and hostilities imposed on New York by this external environment also have a more general applicability. The anti-urban biases of state legislatures is a well-documented fact of American political life. The federal retreat from public education, occasioned by the Reagan White House, will exact its toll in all school districts, urban and nonurban alike.

The point to be made here is that despite New York's distinguishing characteristics, there are some general lessons to be drawn from the events described in these pages. First and foremost, these episodes reinforce the notion, becoming more common in the professional literature, that the job of the urban school superintendent is a highly political one. In addition to being the educational leader of a school district, the superintendent must also serve as chief political actor. One must further incorporate within this delicate role the jobs of policy maker, manager, advocate, image maker, change agent, disciplinarian, and diplomat. In the worst of times, one might add to this list the roles of political pawn or scapegoat. The irony of the situation is that the more skillful a superintendent is at the political role, the less constrained he or she is by political forces. The fact remains, however, that given the clientele the urban superintendent represents, he (she) enters the political arena with the odds against him (her).

There are other, more important lessons to be taken from these chapters. They are less concerned with politics than they are with policy, and are somewhat more positive in tone than the preceding comments. We have already spent a good deal of time discussing professional ignorance and its causal relationship to political conflict. Something needs to be said now about what we know. This will take us beyond the events of New York City. Yet the message to be communicated here is that the New York experience does fit well into a pattern of research observations that have been recorded elsewhere.

The outcomes in New York are consistent with a growing body of social research, conceived largely in the early seventies, which tells us that within the appropriate educational setting, inner-city children can be effectively taught, regardless of race or class. This research on effective schools also tells us that an appropriate educational setting for minority children does not necessarily include the presence of white classmates. We now know that minority children do not need to be mixed with white children in order to derive the benefits of effective instruction. They are perfectly capable of constituting an appropriate collegial setting on their own, so long as other instructional, affective, and material factors are provided within the school environment. To some of us, this conclusion may not sound very astounding. However, we must keep in mind that it runs contrary to the conventional social science wisdom that once dominated the educational profession and, unfortunately, still prevails in many places today.

What we are saying here about effective schools has significant policy implications beyond the realm of instructional strategy. It also impinges upon the more controversial issue of school desegregation. Since the original Brown decision in 1954, we have learned much about the effects of school desegregation. Taken together with what we know about effective schools, the research on desegregation does well in informing policy makers about the consequences of various actions. While there is no persuasive evidence that school desegregation has a significant impact on either the self-image or the achievement levels of minority children, we do know that forced integration and busing result in white flight. There is also some indication that integrated schooling helps cultivate more racial tolerance among children, but the evidence is inconclusive. And whether forced integration breeds such tolerance remains highly questionable.

What does all this that we know tell us about the efficacy and desirability of our policy options? It certainly does not mean that intentional racial isolation is more tolerable now than it was thirty years ago. De jure segregation remains both ethically and legally indefensible. Also, there are those among us who personally believe that a racially integrated school setting is preferable to a segregated one. However, the evidence warns against a public policy which approaches racial integration as a goal in itself, no matter what the cost. It suggests that where feasible, it is more advisable to achieve desegregation through voluntary means rather than by methods which lead to resentment, conflict, and the further abandonment of public education by the middle class. Given what we now know about effective shcools, perhaps there is no longer any need to mourn the flight of the middle class because of its atmospheric effect on the learning process. However, white and middle class flight is quite costly, for it does weaken the political base of the urban school system. And, as our chronicle of the budget wars has shown, this political base determines the level of resources that is made available to the schools.

The most constructive way of attracting the middle class back to the public schools is to demonstrate that these schools can be instructionally effective. From the research literature that has been mentioned, we are now aware of the environmental and human variables that are essential for bringing this about. First and foremost among the ingredients of successful instruction are positive attitudes among classroom teachers. If children are confronted with adult convictions of their own uneducability, then we can expect that it will have an adverse effect on student achievement. This is true of black students and of white, whether they be in an integrated or segregated setting.

The magnitude of the evidence on attitudinal impacts is so persuasive that it dictates a policy calling for a larger investment of public resources in the area of teacher training. A significant part of such instruction should concern the affective realm of the classroom, but it must also go beyond this. The level of confidence that a professional brings to an inner-city school is not totally a function of racial attitudes. It also reflects one's sense of preparedness - a factor determined by command of the subject matter, instructional technique, and classroom management skills. Thus, there is room for further public investment in the development of the teaching force.

We now know that if we want children to improve in their basic reading, writing, and computation skills, then the importance of these subjects must be made known to them. Such an emphasis need not be made at the expense of all other subjects, but it goes beyond a mere declaration of expectations. It must also involve the proper support services and regular feedback to students on their success or progress. It must guarantee the availability of remediation for those children who fall behind.

Whether or not using competency tests to determine elegibility for grade advancement is preferable to social promotion is still debated among professionals. However, the experience in New York did show that with the appropriate support services, the rate of failure on competency tests was lower than had been originally expected.

We can also conlcude from the outcome of the Promotional Gates Program in New York that there is a population of inner-city school children who cannot be adequately reached through traditional modes of instruction. In New York, they are called the double holdovers. These children have much in common with many of those children who have been labeled "handicapped," about whom professionals also feel uncertain when it comes to selecting appropriate strategies for instruction. The existence of such a substantial and ever-growing population for whom we are ill-prepared, emphasizes the need for more experimentation and research in the field of alternative education. Recent literature on the subject shows that alternative education does not necessarily mean a total break with the mainstream, nor does it require the dilution of standards or traditional instructional objectives.[19] A greater public investment in alternative education would allow educators to recognize the diverse needs of our pluralistic urban populations, without necessarily burdening children with labels that are detrimental to human development.

We now have at our disposal a voluminous body of social research which demonstrates quite convincingly that throwing dollars at problems does not make them go away. Alas, an entire field of evaluative research has emerged from a social science capability to document the failure of social programs and the waste of public monies that accompanies such failure. Many of these assessments have been in the field of education, and their results have been used, sometimes inappropriately, as part of the rationale for a federal disinvestment from services to the young. The fact remains, however, that much work still needs to be done. While more dollars alone will not provide us with the resources necessary to get the job done, further cutbacks in federal spending could assure failure. Innovative efforts along the lines of smaller class sizes in the early grades, remedial instruction, teacher training, and experimentation or research on alternative approaches all cost money. Maintaining a safe, comfortable school environment through the proper upkeep, cleaning, and heating of school buildings costs money. Because of inflation, the resource level we do have left for school services is not as valuable as it once was. Because of serious retrenchment at the local level, urban school districts are more dependent on federal support than ever before.

Inner-city school administrators in general, and superintendents in particular, will be required to make better use of the public resources that are made available to them. Intergovernmental transfers can no longer be dealt with as free money, used to swell local coffers without any recognizable impact in the classroom. There must be a greater focus on managerial accountability. But accountability should not be translated to mean less spending. Rather, accountability implies accepting responsibility for the quality and effects of services delivered at the school level.

A major task before the urban superintendent is to regain the credibility that public education in the city once enjoyed. Of course, the first step in this direction is to produce positive results. That is a weighty assignment in itself. However, the obstacles to good public image go beyond the merit factor. They are philosophical and psychological. They are found in a deep-seated public skepticism about urban schools and the educability of the children who attend them. The good news notwithstanding, many of those who make decisions about the future of public education are predisposed to put more stock in the stories of failure. Negativism has become part of a public tradition. Therein lies the most incorrigible challenge.

FOOTNOTES

1. Levittown v. Nyquist, Court of Appeals

2. San Antonio Independent School District v. Rodrieguez, 411 U.S. 1 (1973).

3. Koch's Executive Budget called for increases in the following services: Police, $46,495,000; Corrections, $22,148,000; Social Services, $113,080,000; Fire, $15,955,000; Sanitation, $27,164,000; Transportation, $14,657,000.

4. Angelo Aponte, Memorandum to Frank J. Macchiarola, July 23, 1982.

5. New York Times, August 5, 1982.

6. Board of Education, City of New York, Press Release, June 15, 1982.

7. Ibid.

8. Ibid.

9. Ibid.

10. Ibid.

11. Ibid.

12. "Monitoring Promotional Policies: A Parent Documentation," United Parents Associations, May, 1982.

13. Board of Education of Hendrick Hudson Central School District v. Rowley, 50 U.S.L.W. 4925, June 28, 1982.

14. Crawford v. Board of Education of Los Angeles, 50 U.S.L.W. 5016, June 30, 1982.

15. Washington v. Seattle School District No. 1, 50 U.S.L.W. 4998, June 30, 1982.

16. See, David Rogers, "School Decentralization: It Works," Social Policy, Vol. 12 (Spring, 1982); David Rogers, "Does Decentralization Work?" The Urban Lawyer, Vol. 14 (Summer, 1982).

17. Among those already mentioned are the Educational Priorities Panel, the United Parents Associations, Advocates for Children, and the Public Education Association. However, the list of groups that actually exist is limitless.

18. This figure includes the budgets for the Board of Education, the Secretary and Counsel to the Board of Education, and the Legislative Representative of the Board of Education.

19. See, Mario Fantini, "Mainstreaming Alternatives," Social Policy, Vol. 12 (September-October, 1981).

INTERVIEWS

The list below includes individuals who were formally interviewed by the author at least one time. Titles and affiliations represent relevant associations which these individuals have had with the New York City public school (NYCPS) system, and may not represent their present status. In cases where an individual has held more than one position, the most recent is listed first.

1. Joseph Albergo, President, Community School Board No. 29, NYCPS

2. Anthony Alvarado, District Superintendent, Community School District No. 4, NYCPS

3. Kathy Archelin, lead analyst, Office of Management and Budget, City of New York

4. Robert Bergen, attorney, Office of Corporation Counsel, City of New York

5. Edward Burke, Deputy Director, Office of Management and Budget, City of New York

6. Richard Carman, Executive Assistant to the Executive Director (Jerry Gross), Division of Special Education, NYCPS

7. J. Robert Daggett, Executive Assistant to the Commissioner of Education, New York State

8. Ronald R. Edmonds, Senior Assistant to the Chancellor for Instruction, NYCPS

9. Ted Elsberg, President, Council of Supervisors and Administrators

10. Sandra Feldman, Executive Director, United Federation of Teachers

11. Dr. Dall Forsythe, Assistant to City Council President Carol Bellamy; Director, Office of Budget Operations and Review, NYCPS

12. Carlotte Frank, Executive Director, Division of Curriculum and Instruction, NYCPS

13. Richard Frankan, Deputy Assistant Director, Office of Management and Budget, City of New York

14. Dr. Alan Gartner, Executive Director, Division of Special Education, NYCPS; Director, Center of Advanced Study in Education, City University of New York Graduate School

15. Dr. Bernard Gifford, Deputy Chancellor under Irving Anker, NYCPS

16. Dr. James P. Gifford, Assistant to the Chancellor, NYCPS

17. Susan Glass, Director of Public Affairs, United Federation of Teachers

18. John "Chip" Grey, attorney, Brooklyn Legal Services

19. Dr. Jerry Gross, Executive Director, Division of Special Education, NYCPS

20. Dr. Jerome Harris, District Superintendent, Community School District No. 13, NYCPS

21. Helen "Nicki" Heller, Executive Director, United Parents Associations; Coordinator, Educational Prioities Panel

22. Philip Kaplan, President, New York City School Boards Association; President, Community School Board No. 15, NYCPS

23. Nancy Lederman, attorney, Office of Legal Services, NYCPS

24. Stanley Litow, Executive Director, Educational Priorities Panel

25. Dr. Frank J. Macchiarola, Chancellor, NYCPS

26. Harvey Mandelkern, Deputy Counsel, New York State School Boards Association

27. Alfred Melov, Assistant Superintendent for Promotional Policy, NYCPS; President, New York City Superintendents' Association; District Superintendent, Community School District No. 15, NYCPS

28. Dr. Thomas Minter, Deputy Chancellor for Instruction, NYCPS

29. Roy Moskowitz, attorney, Office of Legal Services, NYCPS

30. Linda Ovadias, President, Rosedale Block Association

31. Arlene Pedone, Assistant to the Chancellor, NYCPS

32. Janet Price, attorney, Advocates for Children

33. Nathan Quinones, Executive Director, Division of High Schools, NYCPS

34. Dr. Stanley Raub, Executive Director, New York State School Boards Association

35. Michael Rebell, attorney representing United Cerebral Palsey of New York

36. Dr. David Rogers, author, 110 Livingston Street

37. Waldemar Rojas, Deputy Director of the Division of Special Education, NYCPS; Executive Assistant to the Chancellor

38. Joseph Saccente, Assistant to Chancellor, NYCPS

39. Reuven Savitz, Senior Assistant to the Chancellor for Business, NYCPS

40. Meryl Schwartz, President, United Parents Associations

41. Albert Shanker, President, United Federation of Teachers

42. George Shebitz, Deputy Director, Office of Legal Services, NYCPS

43. Jane Stern, attorney, Advocates for Children

44. Gary Tarnoff, attorney, Office of Corporation Counsel, City of New York

45. Mary Tucker, Counsel, Board of Education of the City of New York; attorney, Office of Corporation Counsel, City of New York

46. Robert F. Wagner, Jr., Deputy Mayor for Policy, City of New York

47. Claudette Webb, member, Community School Board No. 29, NYCPS

48. Hon. Jack Weinstein, Chief Judge, United States District Court, Eastern District, New York

49. David Wirtz, Council to the Chancellor and Director, Office of Legal Services, NYCPS

50. Carol Ziegler, Special Assistant to the Counsel to the Chancellor, NYCPS